

THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING
IN COOPERATION WITH
PURDUE UNIVERSITY

CHARTERS AND BASIC LAWS

of

SELECTED AMERICAN UNIVERSITIES
AND COLLEGES



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AND COLLEGES

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NEW YORK CITY

THE CARNEGIE FOUNDATION
FOR THE ADVANCEMENT OF TEACHING

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FOREWORD

The present volume is the initial outcome of a project outlined several years ago for the purpose of making readily available certain material essential to those concerned with the organization and government of higher education. Herein have been brought together the charters and basic laws of selected American universities, colleges and technical schools. These charters and basic laws may be said to be representative patterns of the external government of our higher educational institutions.

It is intended in another forthcoming publication to assemble and to analyze the rules and regulations established by the governing authorities of typical institutions; thus revealing the internal mechanisms and procedures for institutional operation. Finally, there has been selected from the recently expanded modern literature dealing with the experience and problems of higher education, material relevant to the effective performance of the duties belonging to the lay members of institutional governing boards. It is proposed to issue this material, in properly classified form, as a handbook for the information and guidance of those upon whom the welfare and progress of American higher education so largely rests. Such a handbook would be a response to the growing conviction that the twenty thousand lay members of the governing boards of American institutions of higher education must be included within the field of constructive professional education.

The fifty-one institutions, the organic laws of which have been included in this collection, are, it is believed, typical of the American system of higher education as this has been developed in the different sections of the country. A sincerely appreciative acknowledgment is here made to the presidents and other officers of these institutions for their generous cooperation in providing necessary documents, and in particular for the exami-

nation and verification of the material selected for presentation.

Dr. Chambers has ably utilized his broad experience and comprehensive studies in the field of educational administration to accomplish the difficult task of selecting and digesting the important judicial cases. In the early stages of the enterprise, Professor Wm. C. McCall of the University of South Carolina, and Professor W. A. Ashbrook of Defiance College, rendered all-important services.

In a number of instances it was necessary to make use of legal material published under copyright. Permission to use such copyrighted material has been generously granted by Banks-Baldwin Law Publishing Company, Cleveland, Ohio, (Carroll's Kentucky Statutes, 1930, and Throckmorton's General Code of Ohio); Bancroft-Whitney Company, San Francisco, California, (Deering's Political Code of California, 1932, and Treadwell's Annotated Constitution of California, 1931); The Bobbs-Merrill Company, Indianapolis, Indiana, (Oregon Code, 1930); The Michie Company, Charlottesville, Virginia, (Virginia Code, 1930); Burdette Smith Company, Chicago, Illinois, (Smith-Hurd's Revised Statutes of Illinois, 1931); John T. Castle, Little Rock, Arkansas (Digest of Arkansas Statutes, 1916). The Secretaries of State of Colorado (Charles M. Armstrong), and of Michigan (Frank Fitzgerald) have also kindly authorized the use of certain copyrighted material published by these states.

Dr. Chambers and I are under a lasting obligation to the American Council on Education and to Dr. John H. MacCracken for the descriptive and historical material relating to the selected institutions, and drawn from *American Universities and Colleges*.

From its inception this project had the invaluable practical assistance and the stimulating personal encouragement of Dr. Henry Suzzallo, the late President of the Carnegie Foundation for the Advancement of Teaching. Since the untimely death of Dr. Suzzallo, a few weeks ago, Dr. Howard J. Savage, the Secretary of the Foundation, has given generously of his time and skill in promoting the completion and publication of the

manuscript. The Carnegie Corporation, through President Frederick Keppel, has provided the funds for publication and distribution. It is hoped that this collection of charters and basic laws may prove to be another convincing illustration of the service being rendered by the Carnegie Foundation and the Carnegie Corporation for the better understanding and the solution of the problems of American higher education.

EDWARD C. ELLIOTT

PURDUE UNIVERSITY
Nov. 10, 1933

PART I
INTRODUCTION

INTRODUCTION

It is said that the Roman emperor, Caligula, posted his laws upon pillars so high that the people could not read them. Although marble columns have long since been outmoded as a principal means of transmitting public information, nevertheless there is still much to be done in the way of making basic legal materials available to the non-legal public and to the members of the professions other than law. Matter which is so profoundly important ought not to remain hidden within the confines of law libraries and institutional archives, but needs to be brought to the light of day wherein it can become a common subject of study and discussion.

The legal basis of higher education has always been important, but is now increasingly so because of the recent large increase in the proportion of the population taking advantage of higher educational opportunities. The constitutional and statutory provisions relating to the several institutions of higher education plus the judicial decisions by which they have been interpreted, constitute basic materials with which a more general familiarity is desirable. These materials are often accessible only to lawyers or law students, most of whom have no special interest in the subject and whose time is largely occupied with other branches of the law. Students of education, teachers, and institutional executives are generally unfamiliar with the intricacies of legal bibliography, and too busy to make the extended search which would be necessary to enable them to acquaint themselves with the legal history of their own institutions, and to compare it with that of other institutions. For the convenience of persons who want a representative view of the law of higher education in the United States, the materials in this book have been compiled.

This is a collection of the charters of fifty-one representative

institutions of higher education. In some cases the original act of incorporation is reproduced, but in others a later charter, under which the institution now operates, has been used in this compilation. In still other instances the original charter as changed by subsequent amendments is used herein. It has not been possible to include all of the numerous legislative acts which affect the institutions directly or remotely. Consequently this volume is not by any means an inclusive collection of the laws affecting any given institution. It is merely a collection of some of the most important legislative acts relating to the selected institutions, which as a whole presents a substantial segment of the legal basis of higher education in the United States.

While all the charters have some points in common, and although many of them have many common characteristics, yet there is a wide range of variety among them, and the total number of separate items dealt with is very large. Almost every institution has some one or more elements in its legal basis which set it apart from all other institutions in some respects. The index of this volume has been prepared with a view toward disclosing most of the significant items found in the various charters, and facilitating the discovery of the frequency with which each item occurs.

To enrich the picture, brief digests of the decisions of the higher state and Federal courts affecting the institutions have been appended. These digests collectively form a considerable section of judicial opinion on questions relating to higher education, and the citations which accompany them make it convenient for any studious reader to initiate for himself a study of the judicial history of any selected institution, or of higher education in any particular state herein represented.

In the case of some institutions, brief legislative histories have been included, in addition to the reproduction of the charter and the abstracts of judicial decisions. Also, in view of the fact that fourteen of the institutions are land-grant colleges receiving aid from the Federal government, it has been thought desirable to add an appendix consisting of selected Federal acts relating to these institutions, beginning with the famous Morrill Land-Grant Act of 1862.

WHY THIS COLLECTION?

The legal basis of education, in common with all other branches of modern law, is by no means immutable. Scarcely does a session of a state legislature pass into history without having enacted some change, small or great, in the statutes governing public and private colleges and universities. Frequently these changes are made without an adequate opportunity to study contemporaneous trends in other states; and such studies as are made are usually not widely available to legislators and educators throughout the land. From time to time new statutes are construed in the higher courts; and knowledge of the important decisions in which the meaning of the statutes has been interpreted is essential to an understanding of the effect of those statutes. Thus there issues from the legislatures and the courts a more or less constant stream of developments which deserves wide-spread observation. But the profit to be derived from such observation is tremendously enhanced if the observer is able to fall back upon a convenient collection of similar material which has accumulated in preceding decades and centuries of experience. To a limited extent, the present compilation will furnish just such a background.

Like all other phases of the contemporary social scene, higher education is constantly undergoing changes and confronting new problems. The unprecedented influx of students into the institutions during the past twenty years has not only created new problems of instruction, but also unforeseen difficulties in housing, discipline, and other features of the management of the institutions as communities of human beings. In response to these difficulties we find demands arising and being met for new methods of financing the construction of dormitories, new definitions of the mutual rights and duties of students and teachers, and new types of regulations governing various features of the conduct of the academic community. Thus we find dormitories and student social centers being constructed with private capital on the amortization plan, whereby they are to become eventually the property of the state, at many state universities. The old problem of the taxing of property owned by college fraternities and used primarily for the housing

of students, continues to be agitated. The universal advent of the automobile has changed the superficial features of student life, and has in many instances brought about the adoption of rules prohibiting the use of motor cars by students save in exceptional cases. These are only a few illustrations of the adjustments in the legal aspects of higher education which current social and technological changes are necessitating. There are no indications that progress is likely to stop in our time. In fact there is every indication that it is likely to be accelerated rather than retarded. If so, it is high time that efforts be made to study systematically the legal basis of higher education on a national scale.

Almost every new type of social legislation which is adopted from decade to decade in the various states, has some immediate or ultimate bearing upon the administration of institutions of higher education. For example, the state inheritance tax laws which were adopted in the late nineteenth century, although not primarily designed to affect college administration, have nevertheless given rise to considerable litigation to determine their application to educational institutions both within and without the particular state concerned. Likewise, the Federal estate tax law has given considerable concern to college and university authorities. The larger question of the general exemption of educational institutions from property taxes has been a problem for legislatures and courts for two centuries, and has given rise to a large number of specific statutes and scores of judicial decisions from the highest courts of many states, some of which are included in this collection of basic materials.

Legislation enacted by the various states under the general name of Workmen's Compensation Laws is another relatively recent type of statutory law which has institutions of higher education within its purview only incidentally, if at all; nevertheless, a recent study discloses that college and university teachers and employees are under the protection of these laws in many states. This fact must be taken cognizance of by institutional governing boards and administrative officers. Not only may an educational institution become liable to its own employees under the provisions of Workmen's Compensation Acts; it may also incur obligations to neighboring property

owners, to tenants of its own property, to innocent passersby, to patrons of its service facilities such as its hospital or its entertainments, or to its own students if any such individuals receive injuries to their persons or property through its willful or negligent fault. All these situations are covered by the general common law of tort responsibility, which in the course of its development as applied to educational institutions has given rise to numerous litigated cases, some of which are abstracted herein.

SUPPORT AND CONTROL BY PRIVATE CORPORATIONS

In most of the features of their legal status, there are sharp and important distinctions between educational institutions which are supported by the states or governmental subdivisions thereof, and those which are supported and controlled by private corporations. Nearly all reputable private educational institutions of college or university grade are now conducted by corporations of a special class operating under charters which completely interdict the distribution of profits to any officer, member, or other private beneficiary whatsoever. Such corporations now very generally have no capital stock and are conveniently designated as non-stock, non-profit corporations. A century ago it was not uncommon for private colleges to be organized as stock corporations; and the gradual elimination of that type of organization is a matter of considerable historical interest, some of which is exposed in the present compilation.

Examination of the charters of some of the older private institutions will also disclose the fact that it was once customary to limit the amount of property which the corporation was authorized to receive and hold. Such limitations have now been very generally removed entirely, but in some instances they have played an important part in the history of the institution. Some of these instances appear in this collection of legal materials.

Privately controlled educational enterprises, now commonly organized as non-profit corporations, are legally classified as public charities. This character is not destroyed by the fact that students pay substantial fees for the benefits they receive. The

body of the common law concerned with the preservation and conduct of charitable trusts has developed through several centuries. Numerous questions arise from time to time not only with reference to the relations between these trusts and private persons, including their beneficiaries, but also with reference to their relations to the state. In this area there arise such interesting and important problems as tax exemptions, public aid to private charitable enterprises, and the establishment of charitable trusts in aid of educational institutions controlled and supported by the states. The discerning reader will reflect at once that these legal problems bear an inseparable relationship to the inclusive problem of the coordination of public and private efforts in higher education, which is now receiving much attention in many states.

PUBLIC SUPPORT AND CONTROL

State support of higher education is a factor of increasing importance in the total scheme of higher education in America. Already approximately one-half of the grand total of all students in higher educational institutions are enrolled in public colleges and universities, including teachers colleges and normal schools. Although a few of the historic state universities were founded in the late eighteenth century, our distinctive system of state-supported higher education may with certain reservations be said to have had its origin in the famous act of Congress of July 2, 1862, known as the Morrill Land-Grant Act, the terms of which have been subsequently accepted by every state, and which has resulted in the establishment of sixty-nine land-grant colleges and universities in fifty-one states and territories. In addition, there are twenty states in which the state university is an institution not operated under the terms of the Morrill Act. For two decades after the Civil War, appropriations of public funds for the support of state colleges and universities in most states were meager and irregular. In most instances the institutions remained small, and their future expansion in size and in service was not widely foreseen. But within the past half-century the state universities and colleges have experienced a phenomenal growth, and many of them are now the largest and best higher educational institutions in their

respective states, and some of them take rank among the great universities of the world.

The relatively sudden development of these institutions has given rise to numerous legal problems, perhaps the chief among which is that of the relationship of the institution to the state. In some states the state university is a corporation which is given a constitutional sphere of authority making it an independent arm of the state, immune from interference by any other branch of the state government, save for its dependence upon legislative appropriations for a major portion of its income. In a majority of the states, however, the university is a corporation of legislative creation, and wholly subject to legislative control. Under these circumstances, the legislature sometimes refrains from subjecting the university to any onerous interference by any non-educational governmental authority; but in many instances it has severely limited the discretion of the governing board in the management of its financial affairs, and subjected it to varied degrees of control by different central fiscal authorities of the state. In a few states the state university has no separate corporate existence, but is merely a branch of the executive department of the state government.

In some states appropriations of lump sums to the university are made, after which the university governing board has full control of the custody of the funds and of their allotment and expenditure for university purposes. In other states specific legislative appropriation of every expenditure by the governing board is required by law, and the custody of all or a part of the university funds is vested by law in the state treasurer. Examples of many of these varying situations will be found in this compilation of legal materials.

An important chain of acts of Congress subsidizing the land-grant institutions in the various states has been enacted since 1862. The Federal government has extended its bounty to include subsidies for the education of teachers of vocational subjects in secondary schools. It has repeatedly increased its financial aid to state agricultural experiment stations and to agricultural extension services which are generally operated in conjunction with the land-grant colleges. Not only does the Federal government grant aid to state-supported higher edu-

cation in the above mentioned forms; it also fully supports and operates certain higher educational institutions, and charters and regulates private colleges and universities in the District of Columbia. Thus the activities of the Federal government alone in higher education are very far-reaching, and this subject has already been considered worthy of exhaustive investigation and report by President Hoover's National Advisory Committee on Education, which published its conclusions in two volumes under the title "Federal Relations to Education" in 1932. Some materials illustrative of this important field are included herein.

Another type of publicly supported higher educational institution is the municipal university, created and controlled by a metropolitan city. There are already several such institutions in the United States, and current population changes will probably favor the eventual establishment of many others. The charter of one such institution is included in this collection.

THE INSTITUTIONS

Some of the private institutions represented herein were chartered by the Crown of England in the colonial period, and a few were chartered by the colonial authorities. Naturally most of the institutions have had their origin at a later period, and have been chartered by their respective states. Those located in the District of Columbia have received their charters from the Congress of the United States. The public institutions comprise several state universities and colleges, and one municipal institution.

The distinction between private and public educational corporations is an important one from the legal standpoint; and the further classification of the various institutions of each type is of assistance in gaining an understanding of their legal basis. Although any condensed classification must of necessity be somewhat arbitrary, its convenience as a key to a more accurate knowledge of the matter in hand is thought to justify its use. Accordingly, a condensed legal classification of the institutions included in this collection is presented in the outline which follows.

LEGAL CLASSIFICATION OF THE SELECTED INSTITUTIONS

I. PRIVATE CORPORATIONS

A. *Chartered by the Crown of England*

Columbia University
Dartmouth College
Princeton University

B. *Chartered by an English Colony in America*

Harvard University
University of Pennsylvania¹
Yale University

C. *Chartered by the Congress of the United States*

Catholic University of America
George Washington University

D. *Chartered by the States*

1. With Specific Reservation of the Right to Amend or Repeal

University of Buffalo
Colby College
Oberlin College
Smith College
Wabash College

2. Without Specific Reservation of the Right to Amend or Repeal²

Carnegie Institute of Technology
University of Chicago
Cornell University³
Duke University
Goucher College
Knox College
Lehigh University
Marquette University
Massachusetts Institute of Technology⁴

¹The University of Pennsylvania was a state institution from 1779 to 1789, but was then restored to its status as a private corporation.

²Some states have in their constitutions or general laws a general reservation of the right to amend or repeal all corporate charters thereafter granted.

³The state colleges of agriculture, home economics, and veterinary medicine of New York are located adjacent to Cornell University, and are administered by its board of trustees, but supported by the state.

⁴Shares Federal Land-Grant subsidies with the Massachusetts State College.

Northwestern University
 Notre Dame University
 Rensselaer Polytechnic Institute
 Stanford University
 Stevens Institute of Technology
 Swarthmore College
 Tulane University⁵
 Vanderbilt University
 Wesleyan University
 Western Reserve University⁶

II. PUBLIC INSTITUTIONS

A. *Municipal Institutions*

University of Cincinnati

B. *State Institutions*

1. Created or confirmed in the constitution

a. Independent of Legislative or Executive Management

University of California
 University of Colorado
 University of Michigan
 Michigan State College
 University of Minnesota

b. Expressly Subject to Legislative Control

University of Alabama
 University of Nebraska
 University of Wyoming

2. Of Legislative Creation and Control⁷

University of Arkansas
 University of Illinois
 Iowa State College⁸
 University of Kansas⁸

⁵Absorbed the old University of Louisiana, a state institution, by the terms of a contract with the state of Louisiana, in 1884.

⁶Has affiliated with it the Cleveland College of Education, which receives some support from the City of Cleveland.

⁷Some of these institutions are mentioned in the Constitution for the purpose of prescribing some detail of their management, but none of them have their corporate existence and powers expressly confirmed and perpetuated in the Constitution.

⁸Governed by a board which also governs all state institutions of higher education.

University of Kentucky
Massachusetts State College
University of Oregon⁸
Purdue University
University of Virginia
University of Wisconsin

THE GOVERNING BOARDS

Every institutional charter or basic statutory law necessarily contains several sections devoted to the composition of the governing board which is to be the repository of legal authority and responsibility in the management of the institution and in the conservation and promotion of its welfare. The legal style of the board, the number of members, the method by which they are to be chosen, and the length of their terms of office must be prescribed. Not infrequently one or more *ex officio* members are designated. Usually the *ex officio* members have the same rights and powers as ordinary members, but occasionally they are given only the right to attend meetings and engage in debate, without the right to vote.

The number of members composing the boards under observation here varies from three to fifty-five, with a median of 19, and an average of 21. The modes of selecting the members include coöption, appointment by the Governor of the state, election by the people, and various combinations of these and other less common methods. The stipulated length of term varies from one year to tenure for life. To expose all these details of the structure of the boards governing the institutions represented in this compilation, the following comprehensive table has been prepared.

⁸Governed by a board which also governs all other state institutions of higher education.

TABLE 1.

NAME OF INSTITUTION AND OF BOARD	DATE OF FIRST FOUNDA- TION	MEMBERSHIP OF BOARD*					TERM IN YEARS
		C	E	A	Ex.	T	
1. Alabama, University of Board of Trustees	1820	11			2	13	12
2. Arkansas, University of Board of Trustees	1871			7	2	9	6
3. Buffalo, University of Council of the University	1846	24	12		8	44	4
4. California, University of Board of Regents	1868			16	8	24	16
5. Carnegie Institute of Tech- nology Trustees of the Carnegie In- stitute	1900	18			18	36	Life
6. Catholic University of America Board of Trustees	1887	30			20	50	Life
7. Chicago, University of Board of Trustees	1890	30				30	3
8. Cincinnati, University of Board of Directors	1870			9		9	9
9. Colby College President and Trustees of Colby College	1813	20	10		1	31	Life, 5

*"C", coöpted; "E", elected; "A", appointed; "Ex.", *ex officio*; "T", total.

APPOINTED OR ELECTED MEMBERS		EX OFFICIO MEMBERS	
HOW CHOSEN	SPECIAL REQUIREMENTS	OFFICIAL POSITIONS	VOTING
Eleven coöpted, confirmed by state senate	One member from each of ten congressional districts and one additional member from district in which university is located	Governor (<i>ex officio</i> president) and state superintendent of education	Yes
Appointed by governor, confirmed by senate	One member from each congressional district, chosen from "mechanical, commercial and literary pursuits as nearly as possible"	Governor (<i>ex officio</i> president) and state superintendent of public instruction	Yes
Twenty-four coöpted by the council; not less than twelve elected by alumni	"No one religious sect shall ever have a majority of the board"	Mayor of the city; deans of the faculties (7)	No
Appointed by governor, "with advice and consent of the senate"		Governor, lieutenant-governor, speaker of the assembly, superintendent of public instruction, president of state board of agriculture, president of the Mechanics' Institute of San Francisco, president of alumni association of the university, president of the university	Yes
Eighteen coöpted		Board of trustees of the Carnegie Free Library	Yes
Coöpted	Ten bishops, ten priests, ten laymen	The Cardinals and the Archbishops of the United States	
Coöpted	Three-fifths of the Trustees must be members of Christian churches, and of this three-fifths a majority must be Baptist; at no time may the Trustees belonging to any other denomination exceed the number of Baptists		
Appointed by mayor	Must be electors of the city		
Twenty members coöpted for life tenure and eight members elected by alumni (two each year, for terms of five years)		President of the College	Yes

TABLE 1.

NAME OF INSTITUTION AND OF BOARD	DATE OF FIRST FOUNDA- TION	MEMBERSHIP OF BOARD*					TERM IN YEARS
		C	E	A	Ex.	T	
10. Colorado, University of Board of Regents	1861		6		1	7	6
11. Columbia University Trustees of Columbia Col- lege	1754	24				24	Life, 6
12. Cornell University Board of Trustees	1865	15	14	5	8	43	Life, 5, 1
13. Dartmouth College Board of Trustees	1769	5	5		10	20	Life
14. Duke University Board of Trustees	1838	12	24			36	Life, 6
15. George Washington University Board of Trustees	1821	27			1	28	3
16. Goucher College Board of Trustees	1885	32	1			33	3

*"C", coöpted; "E", elected; "A", appointed; "Ex.", *ex officio*; "T", total.

APPOINTED OR ELECTED MEMBERS		EX OFFICIO MEMBERS	
HOW CHOSEN	SPECIAL REQUIREMENTS	OFFICIAL POSITIONS	VOTING
Six elected by qualified electors, two at each general election, vacancies filled by appointees of the governor until next general election		President of University	In case of tie vote
Self-perpetuating. Six members nominated by alumni for six-year terms	No professor, tutor, or other assistant officer shall be a trustee	President usually elected a trustee	No
One life member (eldest male descendant of Ezra Cornell), five appointed by governor (subject to confirmation by senate), three by university faculty, fifteen by trustees, ten by alumni, one by state grange. All except the last serve for five-year terms; state grange appointee serves one year	A majority may not be of any one religious sect or of no religious sect	Governor, lieutenant-governor, speaker of assembly, commissioner of education, commissioner of agriculture, president of state agricultural society, president of university, librarian of Cornell library	Yes
Five coöpted by board and five elected by alumni, the right to vote being restricted to graduates of at least five years standing	Seven must be laymen and not more than seven may be residents of other states	Governor, president of college, members of the governor's council (5), president of the senate, speaker of the house, chief justice	Yes
Twelve coöpted by the board, twelve elected by the North Carolina Conference of the M. E. Church, South, twelve elected by the alumni. The coöpted members have life tenure and the elected members serve for six-year terms.	Those members elected by the church conference and by the alumni must first be recommended by a majority of the board of trustees		
The trustees may elect as many as forty-five to membership		President of the University	Yes
Of the thirty-two members elected by the board, ten members, only four of whom may be clergymen, must be chosen from lists of nominees furnished by church conferences and three members must be nominees of the alumni association	Six church conferences of the M. E. Church may submit nominees	President of the College	Yes

TABLE 1.

NAME OF INSTITUTION AND OF BOARD	DATE OF FIRST FOUNDA- TION	MEMBERSHIP OF BOARD*					TERM IN YEARS
		C	E	A	Ex.	T	
17. Harvard University (a) President and Fellows of Harvard College	1636	7				7	Life
(b) Board of Overseers			30		2	32	6
18. Illinois, University of Board of Trustees	1867		9		2	11	6
19. Iowa State College of Agricul- ture and Mechanic Arts State Board of Education (Governs state university, teachers' college and schools for blind and deaf, also)	1858			9		9	6
20. Kansas, University of State Board of Regents (Also governs state agricul- tural college and the teachers' colleges)	1865			9		9	4
21. Kentucky, University of Board of Trustees	1865			12	3	15	6
22. Knox College Board of Trustees	1837	24			1	25	Life
23. Lehigh University Board of Trustees	1866	10	6			16	Life, 6
24. Marquette University (a) Board of Trustees	1864	3				3	3
(b) Board of Governors				7		7	3

*"C", coöpted; "E", elected; "A", appointed; "Ex.", *ex officio*; "T", total.

APPOINTED OR ELECTED MEMBERS		EX OFFICIO MEMBERS	
HOW CHOSEN	SPECIAL REQUIREMENTS	OFFICIAL POSITIONS	VOTING
Coöpted, with the consent of the Board of Overseers	Membership of seven includes the president and the treasurer		
Elected by the alumni		President and treasurer of the corporation	Yes
Three elected at general election every two years for six-year terms	Vacancies filled by appointment by governor, until next general election	Governor and the superintendent of public instruction	Yes
Appointed by governor, three every two years, with approval of two-thirds of members of state senate. Nominations must first be considered by senate committee of five, only three of whom may be of same political party	Not more than five may be of the same political party and not more than one alumnus of each institution governed by the board may be members		
Appointed by governor			
Four appointed by governor every two years	Must be "discreet, intelligent and prudent." One of each group of four must be a member of state board of agriculture, one of each four a nominee of alumni, and other two distinguished citizens, not both members of same political party. With exception of alumni members, no two may be from any one county	Governor, superintendent of public instruction, commissioner of agriculture	Yes
Coöpted		President of the College	Yes
Ten coöpted, six elected by alumni (one each year for six-year term) and approved by the board	No officer or teacher eligible		
Coöpted			
Appointed by the president and board of trustees			

TABLE 1.

NAME OF INSTITUTION AND OF BOARD	DATE OF FIRST FOUNDA- TION	MEMBERSHIP OF BOARD*					TERM IN YEARS
		C	E	A	Ex.	T	
25. Massachusetts State College Board of Trustees	1863			14	4	18	7
26. Massachusetts Institute of Technology The Corporation	1861	35	15		4	54	Life, 5
27. Michigan State College of Ag- riculture and Applied Science State Board of Agriculture	1855		6		1	7	6
28. Michigan, University of Board of Regents	1817		8		2	10	8
29. Minnesota, University of Board of Regents	1851		12		1	13	6
30. Nebraska, University of Board of Regents	1869		6			6	6
31. Northwestern University Board of Trustees	1851	36	8			44	4, 2
32. Notre Dame du Lac, Univer- sity of (a) Board of Trustees	1844					6	Indef- inite
(b) Board of Lay Trustees			16		3	19	6
33. Oberlin College Board of Trustees	1834	24			1	25	6

*"C", coöpted; "E", elected; "A", appointed; "Ex.", *ex officio*; "T", total.

APPOINTED OR ELECTED MEMBERS		EX OFFICIO MEMBERS	
HOW CHOSEN	SPECIAL REQUIREMENTS	OFFICIAL POSITIONS	VOTING
Appointed by governor, with advice and consent of the council		Governor, commissioner of education, commissioner of agriculture, president of the College	Yes
Thirty-five coöpted for life and fifteen (three each year) nominated by alumni and elected by board for five-year terms. All must receive a majority vote and seven negative votes prevent election	No professor, teacher, or lecturer may be elected	Governor, chief justice of supreme judicial court, commissioner of education, president of the corporation	Yes
Two members elected, popular election, every biennium		President of College	No
Two members elected, popular election, each biennium. Vacancies filled until next election by appointees of the governor		President of University and superintendent of public instruction	No
Four elected by joint convention of both houses of legislature each biennium. Governor appoints members to fill vacancies until next election		Chancellor of University, <i>ex officio</i> president of board	Yes
Popular election, two each biennium	One from each district of the state		
Thirty-six coöpted by corporation for periods of four years, nine elected each year. Eight elected by four conferences of M. E. Church, one each year for two-year term	Majority must be members of M. E. Church. Three must be residents of Illinois		
	Must be members of the Congregation of Holy Cross		
Eight elected by the alumni; eight coöpted	Eight must be alumni and eight non-alumni	Provincial of the Congregation of Holy Cross in the United States; the President and treasurer of the University	Yes
Three coöpted each year for four-year terms and one elected by alumni each year for four-year term	No teacher in the college eligible to election	President of the College	Yes

NAME OF INSTITUTION AND OF BOARD	DATE OF FIRST FOUNDA- TION	MEMBERSHIP OF BOARD*					TERM IN YEARS
		C	E	A	Ex.	T	
34. Oregon, University of State Board of Higher Edu- cation (Also governs the State Col- lege and the three state normal schools)	1872			9		9	9
35. Pennsylvania, University of Board of Trustees	1740	40			1	41	Life
36. Princeton University Board of Trustees	1746	30	8		2	40	Life, 4
37. Purdue University Trustees of Purdue Univer- sity	1865			9		9	3
38. Rensselaer Polytechnic Insti- tute Board of Trustees	1824	24			1	25	Life
39. Smith College Trustees of Smith College	1871	11	4			15	10, 8
40. Stanford University Board of Trustees	1885	15				15	10
41. Stevens Institute of Technol- ogy Board of Trustees	1870	17	3			20	Life, 3
42. Swarthmore College Board of Managers	1864	32				32	4

*"C", coöpted; "E", elected; "A", appointed; "Ex.", *ex officio*; "T", total.

APPOINTED OR ELECTED MEMBERS		EX OFFICIO MEMBERS	
HOW CHOSEN	SPECIAL REQUIREMENTS	OFFICIAL POSITIONS	VOTING
Appointed by governor, by and with consent of the senate. Appointees in interim between legislative sessions confirmed by senate committee on executive appointments. Two-thirds vote of senate necessary to approve	No member may be connected with any of the state colleges, not more than three may be alumni of the respective institutions and not more than one of these three an alumnus of any one college, none may be residents of cities in which institutions are located		
Coöpted		Governor of the state	Yes
Thirty Charter trustees coöpted for life or such terms as board may fix, eight alumni trustees elected for terms fixed by the board (at present four-year terms)	Eight, including <i>ex officio</i> trustees, must be inhabitants of New Jersey	Governor of state and president of University	Yes
Nine appointed by governor, three upon nomination of alumni	Two of governor's appointments to be from representatives of agriculture, two of manufacturing industries, one trustee to be a woman, one alumni nominee to be a graduate of the school of agriculture		
Coöpted		Mayor of the city of Troy	Yes
Eleven elected by board for ten-year terms, these not eligible to reelection within one year. Four elected by alumni, one every second year for eight-year term			
Coöpted. Those appointed May 1, 1899, hold office for life			
Seventeen coöpted by board for life terms; three elected by board from list of nominees from alumni, one of these chosen each year for three-year term			
Coöpted, eight being elected annually for terms of four years			

NAME OF INSTITUTION AND OF BOARD	DATE OF FIRST FOUNDA- TION	MEMBERSHIP OF BOARD*					TERM IN YEARS
		C	E	A	Ex.	T	
43. Tulane University of Louisiana Board of Administrators	1834	17			3	20	Life
44. Vanderbilt University Board of Trust	1872	32				32	Life
45. Virginia, University of Rector and Visitors	1819			9	1	10	4
46. Wabash College Board of Trustees	1832	20			1	21	4
47. Wesleyan University Board of Trustees	1831	32	22		1	55	5
48. Western Reserve University	1826						
(a) Western Reserve Univer- sity—Board of Trustees		18	6		1	25	6
(b) Adelbert College of Western Reserve Univer- sity Board of Trustees		22	2		1	25	6
(c) Cleveland College Board of Trustees			14		1	15	7
(d) Cleveland School of Ar- chitecture Board of Trustees			6		1	7	6, 3
49. Wisconsin, University of Board of Regents (The University also has a board of 12 visitors, 4 ap- pointed by regents, 4 by alum- ni, and 4 by governor. This board of visitors is provided for by a "law of the regents," not by state legislation.)	1848		15		2	17	6
50. Wyoming, University of Board of Trustees	1886			9	2	11	6
51. Yale University President and Fellows	1701	10	6		3	19	Life, 6

*"C", coöpted; "E", elected; "A", appointed; "Ex.", *ex officio*; "T", total.

APPOINTED OR ELECTED MEMBERS		EX OFFICIO MEMBERS	
HOW CHOSEN	SPECIAL REQUIREMENTS	OFFICIAL POSITIONS	VOTING
Coöpted		Governor, superintendent of public education and mayor of New Orleans	Yes
Coöpted (Trustees may increase or diminish number)			
Appointed by governor, by and with consent of senate, three appointees from list of nominees by alumni		Superintendent of public instruction	Yes
Sixteen coöpted; four coöpted upon nomination by the alumni		President of the College	Yes
Thirty-two coöpted, ten elected by alumni of three years' standing, twelve elected, one each, by twelve M. E. Church conferences	Trustees elected by conferences must not exceed one-fourth of entire board membership	President of University	Yes
Eighteen coöpted and six elected by alumni of respective colleges		President of University	Yes
Twenty-two coöpted and two elected by alumni		President of the College	Yes
Elected by the corporation, which consists of not more than 30 coöpted members	Must be members of the corporation	President of the College	Yes
Elected by the corporation, which consists of not more than 15 coöpted members	Must be members of the corporation	President of University	Yes
Appointed by governor, one from each congressional district and four from state at large	Two must be farmers, two engaged in manual trades and at least two women	President of University and state superintendent of public instruction	President in case of tie
Appointed by governor, confirmed by senate	Three and only three shall be residents of the county of Albany. No member of faculty may be a trustee	President of University and superintendent of public instruction	No
Ten coöpted, six elected by alumni for six-year terms		Governor, lieutenant-governor and president of University	Yes

FURTHER STUDIES

The United States Office of Education lists 1,078 universities, colleges, and professional schools, and 331 teachers colleges and normal schools. Included in the first category are 346 schools which are departments of universities and colleges, and 277 junior colleges. If the cosmopolitan universities are regarded as units and counted but once, the total number of institutions of higher learning of all types is near 1,000. The aggregate number of students is more than 1,000,000, and the number of teachers of all ranks is about 80,000. No accurate estimate of the aggregate number of members of institutional governing boards is available, but since the average number on such boards seems to be approximately twenty, the total number of members must be near twenty thousand. Adding the above three groups of persons discloses that nearly one per cent of the entire population of the United States is directly engaged in the enterprise of higher education. This one per cent will probably have a larger share in the social leadership of coming decades than any other similar section of the population which could be selected. In view of this, it is surprising that so little has been done toward the systematic study of the legal basis of higher education on a national scale. It is but another instance of the general situation in which our social knowledge lags behind our technological progress and our accumulation of wealth.

In seeking to make a contribution in this field of knowledge, the Carnegie Foundation for the Advancement of Teaching and its representatives in charge of the present project have determined upon the prosecution of three studies, of which this compilation of the charters and basic laws of fifty-one representative colleges and universities is the first. The second study is concerned with the production of a convenient handbook for members of institutional governing boards, to consist of a series of questions regarding numerous phases of their duties and responsibilities, followed by terse, readable and accurate answers, gleaned from all available sources, including current practice, survey reports, textbooks and dissertations, as well as legal sources. The third study contemplated is a collection and comparison of the by-laws, ordinances, and rules and regulations

of the governing boards of a number of representative institutions. This collection will in many respects parallel and supplement the present collection of charters and basic laws. Whereas the present volume is largely limited to constitutional provisions, acts of the state legislatures, and judicial interpretations thereof, the third volume will consist principally of enactments of the institutional governing boards themselves. It will be a representative collection of the more important resolutions enacted by selected college and university governing boards in the exercise of their ordinance-making power.

The production of the three studies projected is for the purpose of providing in convenient form three types of materials useful to board members, administrative officers, teachers, students, and all who have an interest in the development of higher education as an instrument of the common welfare.

PART II

LAWS RELATING TO
SELECTED INSTITUTIONS

UNIVERSITY OF ALABAMA

TUSCALOOSA, ALABAMA

A state university founded in 1831. Comprises the College of Arts and Sciences, the College of Engineering, the Law School, the School of Commerce and Business Administration, the School of Medicine, the College of Education, the Graduate School, the School of Chemistry, and the School of Home Economics. Endowment in 1930, \$2,175,000. Total annual income, about \$1,250,000. This is the only state institution which has all members of its governing board chosen by coöption, subject to confirmation by the State Senate, with the exception of *ex officio* members. This method of selection is provided for by section 264 of the Constitution of Alabama (1901).

LAWS RELATING TO THE UNIVERSITY OF ALABAMA

CONSTITUTIONAL PROVISIONS (RATIFIED, NOVEMBER 11, 1901)

ARTICLE XIV EDUCATION¹

SECTION 264. The State University shall be under the management and control of a board of trustees,² which shall consist of two members from the Congressional District in which the University is located, one from each of the other Congressional Districts in the State, the Superintendent of Education, and the Governor, who shall be *ex officio* president of the board. The members of the board of trustees as now constituted shall hold office until their respective terms expire under existing law, and until their successors shall be elected and confirmed as hereinafter required. Successors to those trustees whose terms expire in Nineteen Hundred and Two shall hold office until Nineteen Hundred and Seven; successors to those trustees whose terms expire in Nineteen Hundred and Four shall hold office until Nineteen Hundred and Eleven; successors to those trustees whose terms expire in Nineteen Hundred and Six shall hold office until Nineteen Hundred and Fifteen; and thereafter their successors shall hold office for a term of twelve years. When the term of any member of such board shall expire, the remaining members of the board shall, by secret ballot, elect his successor; provided, that any trustee so elected shall hold office from the date of his election until his confirmation or rejection by the Senate, and, if confirmed, until the expiration of the term for which he was elected, and until his successor is elected. At every meeting of the Legislature the Superintendent of Education shall certify to the Senate the names of all who shall have been so elected since the last session of the Legislature, and the Senate shall confirm or reject them, as it shall determine is for the best interest of the University. If it reject the names of any members, it shall thereupon elect trustees in the stead of those rejected. In case of a vacancy on said board by death or resignation of a member, or from any cause other than the expiration of his term of office, the board shall elect

¹*Alabama School Code, 1927*, pp. 13-15. See "Historical Summary," at end, for earlier provisions.

²Acts 1903, p. 109.

his successor, who shall hold office until the next session of the Legislature. No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such.

SECTION 265. After the ratification of this Constitution there shall be paid out of the treasury of this State at the time and in the manner provided by law, the sum of not less than thirty-six thousand dollars per annum as interest on the funds of the University of Alabama, heretofore covered into the treasury, for the maintenance and support of said institution; provided, that the Legislature shall have the power at any time they deem proper for the best interest of said University to abolish the military system³ at said institution or reduce the said system to a department of instruction, and that such action on the part of the Legislature shall not cause any diminution of the amount of the annual interest payable out of the treasury for the support and maintenance of said university.

SECTION 267. The Legislature shall not have power to change the location of the State University, or the Alabama Polytechnic Institute, or the Alabama Schools for the Deaf and Blind, or the Alabama Girls' Industrial School, as now established by law, except upon a vote of two-thirds of the Legislature taken by yeas and nays and entered upon the journals.

STATUTORY PROVISIONS

SCHOOL CODE⁴

ARTICLE IV

STATE BOARD OF EDUCATION

SECTION 35. State Board of Education, General Powers Of. The State Board of Education shall exercise, through the State Superintendent of Education and his professional assistants, general control and supervision over the public schools of the State, except the University, the Alabama Polytechnic Institute, and the Alabama College, and shall consult with and advise through its executive officer and his professional assistants, county boards of education, city and town boards of education, superintendents of schools, school trustees, attendance officers, principals, teachers, supervisors, and interested citizens, and shall seek in every way to direct and develop public sentiment in support of public education.

³Acts 1903, p. 115.

⁴*Alabama School Code, 1927.* Section numbers as given in the school code. See "Historical Summary," at end, for earlier provisions.

ARTICLE XXXI

UNIVERSITY OF ALABAMA

SECTION 543. University of Alabama, a Body Corporate. The Governor and the State Superintendent of Education, by virtue of their respective offices, and the Trustees heretofore appointed from the different Congressional Districts of the State under the provisions of Section 264 of the Constitution, and such other members as may be from time to time added to the Board of Trustees and their successors in office, are constituted a body corporate under the name of "The Board of Trustees of the University of Alabama", to carry into effect the purposes and intent of the Congress of the United States in the grant of lands by the Act of April 20, 1818, and of the Act of March 2, 1819, to this State, to be by it held and administered for the benefit of a seminary of learning.

SECTION 544. Corporate Powers of University. Such corporation shall have all the rights, powers, and franchises necessary to or promotive of the end of its creation, and shall be charged with all the corresponding duties, liabilities, and responsibilities.

SECTION 545. Power To Sell Property. Such corporation may hold, and may lease, sell, or in any other manner not inconsistent with the object or terms of the grant or grants under which it holds, dispose of any property, real or personal, or any estate or interest therein, remaining of the original or any subsequent grant by Congress, or by this State, or by any person, or accruing to the Corporation from any source, including also the proceeds of the "University Fund," as to it may seem best for the purposes of its institution.

SECTION 546. University Fund. The Fund designated in the preceding section as the "University Fund" consists of the sum of thirty-six thousand dollars per annum as interest on the funds of the University of Alabama, heretofore covered into the Treasury, for the maintenance and support of said institution, which said sum of thirty-six thousand dollars shall be paid to the duly authorized agent of the University as hereinafter provided; and the further sum of twenty-five thousand dollars, annually, is added to and made a part of the University Fund.

SECTION 547. Grants and Gifts Preserved. No grant or gift, by will or otherwise, shall fail on account of any misnomer or informality, when the intention of the grantor or donor can be ascertained; nor shall any default, or malfeasance on the part of the Trustees or other officers or agents of such Corporation, work a forfeiture of any of its rights, powers, privileges, or franchises.

SECTION 548. Rights, Franchises, Properties and Privileges Retained. In addition to the rights, properties, privileges, and franchises herein granted, all rights, properties, privileges, and franchises heretofore, by any Act of the Legislature, granted to or vested in the University of Alabama, shall vest and continue in such Corporation.

SECTION 549. Appointment of Faculty. The Board of Trustees have the power to organize the University by appointing a corps of instructors, who shall be styled the faculty of the University, and such other officers as the interest of the University may require; to remove such instructors or officers, and to fix their salaries or compensation, and increase or reduce the same at their discretion; to institute, regulate, alter, or modify the government of the University, as they may deem advisable; to prescribe courses of instruction, rates of tuition, price of board, and regulate the necessary expenses of students; and to confer such degrees as are usually conferred by similar institutions. They may delegate to the Faculty of the University, or other officers, such powers and functions in the government of the students, and in the administration of the affairs of the University, as they may deem proper; but in no case shall any person be authorized to receive, hold or disburse any funds of the University without having first given bond, conditioned for the faithful discharge of his duties; and no person shall be excluded from the full benefit of the University Fund, or placed at any disadvantage in the pursuit of his studies, who possesses the requisite literary or other qualifications, and is willing to submit to the discipline prescribed for the students.

SECTION 550. Trustees: Appointment: Terms: Authority Of. The State University shall be under the control of the Board of Trustees, which shall consist of two members from the Congressional District in which the University is located, and one from each of the other Congressional Districts in the State, the State Superintendent of Education, and the Governor, who shall be *ex officio* President of the Board. The members of the Board of Trustees, as now constituted, shall hold office until their respective terms expire under existing law, and until their successors shall be elected and confirmed, as hereinafter required. Successors to those Trustees whose terms expire in Nineteen Hundred and Two shall hold office until Nineteen Hundred and Seven; successors to those whose terms expire in Nineteen Hundred and Four shall hold office until Nineteen Hundred and Eleven; successors to those Trustees whose terms expire in Nineteen Hundred and Six shall hold office until Nineteen Hundred and Fifteen; and thereafter their successors shall hold office for a term of twelve years. When the term of any member of such Board shall expire, the remaining members

of the Board shall, by secret ballot, elect his successor, provided, that any Trustee so elected shall hold office from the date of his election until his confirmation or rejection by the Senate, and if confirmed, until the expiration of the term for which he was elected, and until his successor is elected. At every meeting of the Legislature the State Superintendent of Education shall certify to the Senate the names of all who have been so elected since the last session of the Legislature and the Senate shall confirm or reject them as it shall determine for the best interest of the University. If it rejects the names of any member it shall thereupon elect Trustees in the stead of those rejected. In the case of a vacancy on said Board by death or resignation of a member, or from any cause other than the expiration of his term of office, the Board shall elect his successor, who shall hold office until the next session of the Legislature, when the name of a successor or successors elected by said Board to fill the vacancy or vacancies so occasioned shall be certified by the State Superintendent of Education to the Senate, and the Senate shall confirm, or reject, as it shall determine is for the best interest of the University; and if confirmed by the Senate, the person, or persons so elected to fill said vacancy shall hold office for the unexpired term to which he is so elected. If the Senate rejects the name of any person to fill said vacancy, it shall thereupon elect some person or persons in the stead of those rejected. No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such.

SECTION 551. Quorum of Trustees. Five members of the Board of Trustees, exclusive of the *ex officio* members, shall constitute a quorum, and every member present shall be required to vote, and a majority of those present shall govern. At their first meeting, the Board shall elect one of their number president pro tempore, who shall preside in the absence of the Governor, and shall hold the position until the next annual or special meeting, when another president pro tempore shall be elected.

SECTION 552. Meetings of Trustees. The Board of Trustees shall meet at least once in each year, and on the first Wednesday in June, unless some other day is selected by them, and they may, by ordinance or resolution adopted by them, prescribe other regular times for meeting. At such meeting they may continue in session as long as they may deem proper for the welfare of the institution, and may at any session appoint a special or adjourned meeting. Upon the written application of four members, or of any three members with his concurrence, the president pro tempore shall appoint a special meeting, and issue notice thereof to the several members; but such special meeting shall not be appointed for a day less than twenty days

subsequent to the date of the notice. In case there is no president pro tempore of the Board, or in case he is incapacitated to act, then the Governor, as President of the Board, shall, upon the written application of four members, in like manner call such special meeting. Regular meetings of the Board must be held at the University, but special or adjourned meetings may be held at the University or in the City of Montgomery, or in the City of Birmingham.

SECTION 553. Records of Trustee's Proceedings Preserved: Payment of Expenses of Trustees. The proceedings of the Board of Trustees must be recorded in a substantially bound book, which must be kept in the archives of the University; and the Board may at any meeting employ a Secretary. The certificate of the President, or in his absence, of the president pro tempore, countersigned by the Secretary, if there be one, shall entitle the several Trustees to their constitutional pay out of the Treasury of the University; and the compensation of the Secretary and the necessary incidental expenses of the Board at each session shall be paid on the order of the Board, and the certificate of the President, or president pro tempore, as the case may be, out of such Treasury.

SECTION 554. Trustees Make Report to Legislature. It shall be the duty of the Board of Trustees to make to the Legislature, at each session thereof, a full report of their transactions, and of the condition of the University, embracing an itemized account of all receipts and disbursements on account of the University by those charged with the administration of its finances.

SECTION 555. Appropriations, When and How Paid. The State Treasurer must, quarterly, on the last day of December, March, June and September of each year, pay the "University Fund" as defined by Section 1872 of the Alabama Code of 1907, to the Treasurer or any authorized agent of the University; and on the application of such Treasurer or agent, the State Auditor shall draw his warrant on the State Treasurer for the amount due; such payments to commence on the days specified after the present Constitution becomes operative. Appropriations subsequently made shall be paid in like manner unless otherwise prescribed.

SECTION 556. Power Reserved to Legislature Over Certain Funds. The right is reserved to the Legislature to revise or amend the provisions of this article, and by virtue of the character of the trust conferred by the Act of Congress, to intervene, and, by special enactment, to direct and control the Board of Trustees in the discharge of their duties and functions.

SECTION 557. Books May Be Furnished Law Department. The justices of the Supreme Court are authorized from time to time to set apart and turn over to the law department of the University, copies of such second hand or superseded law books, known as textbooks, as they may deem expedient, the marshal and librarian taking proper receipts therefor.

SECTION 558. Code of Alabama Furnished Law Department. The Secretary of State shall supply to such Law Department ten copies of the Code of Alabama and ten copies of each volume of the current reports of the Supreme Court, as the same may, from time to time, be published.

SECTION 559. Police Officers Appointed by President. The President of the University has authority to appoint or employ one or more suitable persons to act as police officers to keep off intruders and prevent trespass upon and damage to the property of the University. Such person shall be charged with all the duties and invested with all the powers of police officers, and may eject trespassers from the University buildings and grounds, and may, without warrant, arrest persons guilty of disorderly conduct, or of trespass on the property of the institution, and carry them before the nearest Justice of the peace or other officer charged with the trial of such offenders, before whom, upon proper affidavit charging the offense, such person so arrested may be tried and convicted as in case of persons brought before him on a warrant; and such officer or officers shall have authority to summon a posse comitatus.

SECTION 560. Authority of Trustees to Dispose of Property. The Board of Trustees of the University of Alabama may sell, lease, or otherwise dispose of, all or any part of such land as has been or may be selected under and by virtue of an Act of Congress entitled, "An Act to increase the endowment of the University of Alabama from the public school lands in said State," approved April 23, 1884; and may sell lands or any interest therein or part thereof for such prices and upon such terms as to them may seem proper. Such sales may be for cash or for part cash, and the said Board of Trustees of the University of Alabama shall not be limited by any statute heretofore enacted as to what part of the purchase price of such lands which they have heretofore sold or may hereafter sell shall be in cash, but the per centum of the purchase price of such lands that may have been or shall be in cash, shall be such as said Board of Trustees of the University of Alabama may agree upon with the purchaser or purchasers.

SECTION 561. Executive Committee of Trustees. The Board of Trustees of the University of Alabama may create an executive committee consisting of three or more of the Trustees composing the said Board upon which committee it

may confer full power and authority to lease, sell, and convey such lands or any part thereof, or any interest therein, as fully as said Board of Trustees of the University of Alabama could itself do.

SECTION 562. Ratification of Certain Acts of Trustees.

All sales, agreements to sell, leases, and other dispositions of such lands, or any part thereof, or any interest therein, heretofore made or attempted to be made by the Board of Trustees of the University of Alabama, or by any executive committee by it created, irrespective of the per centum of the purchase price which may have been paid in cash, are ratified and confirmed, and shall be binding upon the Board of Trustees as fully as if the same were made after the 28th day of February, 1907, and in cases where the same were made by an executive committee, as if the same were made by the Board of Trustees of the University of Alabama.

SECTION 563. Medical Department. The Corporation styled The Medical College of Alabama is dissolved and the institution known as the Medical College of Alabama is constituted the Medical Department of the University of Alabama and shall hereafter be under the sole ownership, management and control of the Board of Trustees of the University of Alabama. All appropriations in money made for the aid of the Medical College shall inure to the benefit of the said Medical Department of the University of Alabama and shall be paid to the Trustees of the University of Alabama for the use and benefit of said Medical Department, and any appropriation for the maintenance and equipment of the Graduate School of Medicine of the University of Alabama at Birmingham, Alabama, shall be paid by the State Treasurer in equal quarterly installments on the first day of January, April, July and October, to the Treasurer of the University of Alabama upon warrants drawn by the State Auditor as warrants are drawn for other appropriations to the University of Alabama or to the Board of Trustees of the University of Alabama, but such money shall be used exclusively for the Graduate School of Medicine of the University of Alabama at Birmingham.

SECTION 564. School of Mines of Alabama. The Department of Mining Engineering of the University of Alabama is declared to be the "School of Mines" of the State of Alabama. Alabama's share of such Federal Aid as may hereafter be provided by Congress for the promotion or development of mines and mining, and mining engineering in the several States through educational agencies, shall be put at the exclusive disposal of the University of Alabama to be utilized in connection with or by that institution in such manner as the Federal Law and regulations may prescribe.

SECTION 565. Appropriation For Bureau of Mines. The Federal Bureau of Mines, Department of the Interior, has agreed to establish at a cost to the Federal Government of twenty-five thousand dollars per annum, a mining experiment station at the University of Alabama, on condition that such station shall be properly housed, equipped and maintained at the expense of the State of Alabama, and the continuance of such station in Alabama is dependent on meeting the conditions of the Federal Government, therefore, for the purpose of procuring the establishment of such station in the State at the University of Alabama, there is appropriated out of the funds in the Treasury not otherwise appropriated the sum of twenty-five thousand dollars per annum, or such part of said sum as may be necessary, for the purpose of procuring and maintaining such station. Such appropriation shall begin October 1, 1920, and be payable to the Treasurer of the University of Alabama on his requisition on the State Auditor, drawn from time to time.

SECTION 566. Appropriation For University. There is appropriated annually to the University of Alabama out of any moneys in the Treasury not otherwise appropriated the following: (1) The sum of thirty-six thousand dollars annually as interest on the funds of the University of Alabama, heretofore covered into Treasury, for the maintenance and support of said institution. (2) The sum of seven thousand five hundred dollars for each and every year for the maintenance of the Extension Division of the University. (3) The sum of seven thousand dollars for each and every year for the maintenance and support of the Summer School. (4) The sum of twenty thousand dollars annually for the maintenance and equipment of the Medical Department of the University of Alabama. (5) The sum of ten thousand dollars for each and every year for the maintenance and equipment of the Graduate School of Medicine of the University of Alabama at Birmingham.

SECTION 567. When And How Appropriation Made. The above appropriations, with the exception of the appropriation for the Summer School, which shall be paid on July first, annually, shall be paid quarterly on the first day of October, January, April and July out of any moneys in the State Treasury not otherwise appropriated, upon the requisition of the President of the University of Alabama upon the State Auditor who shall draw his warrant upon the State Treasurer in favor of the Treasurer of the University of Alabama for the amount for which requisition is made.

SECTION 568. Testing Laboratory. The testing laboratory of the University of Alabama is the official testing laboratory for cement and other materials of construction.

SECTION 569. Summer School. The Trustees of the Uni-

versity of Alabama may establish at that institution a school to be known as the Summer School for Teachers, at which during the summer months instruction shall be given in all the public school studies and in such other studies as may be necessary to better prepare teachers for efficient service in the public schools of this State.

SECTION 570. Maintenance of Summer School. The Summer School for teachers at the University of Alabama shall be maintained and supported by the annual Legislative appropriation for that specific purpose.

SECTION 571. Payment of Certain Appropriations. The amount of annual Legislative appropriation shall on the first day of July of each year, be paid by the State Treasurer to the Treasurer of the University of Alabama, on warrants drawn by the State Auditor as warrants are drawn for other appropriations to the University. Appropriations subsequently made shall be paid in like manner, unless otherwise prescribed. The Trustees of the University shall report in writing to the Legislature at each regular session thereof the manner in which the appropriation has been expended.

SECTION 572. Examinations For Teachers. The State Board of Examiners for Teachers, upon written request of the Director of the Summer Session, shall conduct or have conducted, annually, at the University, at the close of the Summer School for Teachers, an examination for the convenience of Teachers attending that school. The examination shall be equal in all respects to the regular examination required by law. The same fees shall be charged, and the examination shall be conducted under the same rules and regulations.

ARTICLE XXXII

STATE COUNCIL OF EDUCATION

SECTION 573. State Council of Education: How Constituted: Purpose Of. In order to co-ordinate the educational efforts of the University of Alabama, the Alabama Polytechnic Institute, and the Alabama College, there is hereby created a State Council of Education to be composed of the Governor, who shall be chairman, two members of the State Board of Education, the State Superintendent of Education, the President of the University of Alabama, the President of the Alabama Polytechnic Institute, the President of the Alabama College, and one member of the Board of Trustees from the University of Alabama, the Alabama Polytechnic Institute, and the Alabama College. The members of the State Council of Education from the State Board of Education shall be chosen by the State Board of Education and the members from the

Boards of Trustees of each of the three institutions of higher learning shall be selected by the respective Boards of Trustees. The State Superintendent of Education shall be the Secretary of the State Council of Education.

SECTION 574. Duty of State Council of Education. The State Council of Education shall study the needs of higher education and of education in general throughout the State and shall endeavor to encourage the healthful development of all educational agencies and to allocate wisely among the existing agencies the different portions of the task of training in so far as may not be inconsistent with the powers and duties of the Board of Trustees of three institutions of higher learning and of the State Board of Education as prescribed by the Constitution of the State and by law.

SECTION 575. Advisory Boards May Be Associated With Council. The State Council of Education shall have authority to associate with it two Advisory Boards, one composed of delegates representing the agricultural, commercial, industrial, and similar organizations of the State whose duty it shall be to assist in the investigations of the Council and to enlist the co-operation of the several agencies in the improvement of the economic condition of the State, including the schools; the second composed of representatives of the Alabama Educational Association, the State Association of Colleges, and similar organizations, whose duty it shall be to promote the internal work of the schools, to develop a wholesome professional spirit and to promote the cause of education within the ranks of the profession.

SECTION 576. Rules and Regulations May Be Promulgated By Council. The State Council of Education shall have authority to make rules and regulations governing the time of meeting and to take such other action, not inconsistent with law, as may be deemed necessary to carry out the provisions of this article.

HISTORICAL BACKGROUND

A. FORMER CONSTITUTIONAL PROVISIONS

1. The Constitution of 1819 directed the General Assembly to conserve lands and funds from such lands "as have been or may be hereafter granted by the United States to this state, for the support of a seminary of learning . . . for the exclusive support of a State University, for the promotion of the arts, literature, and the sciences,"

2. 1861: The Constitution of 1861 repeated the provisions of the Constitution of 1819.
3. 1868: The Constitution of 1868 provided that the common schools and other educational institutions of the state be under the management of a Board of Education consisting of a Superintendent of Public Instruction and two members from each Congressional district. The Governor was made, *ex officio*, a member of the Board without vote; the Superintendent of Public Instruction was to serve as President of the Board and have the casting vote in case of a tie. The term of office was set at four years and the members of the Board, except the Superintendent were to be elected at the same time and in the same manner as the members of Congress.

Section 14 of Article XI, which article contains the preceding provisions referred to, authorized the establishment of an agricultural college which the Legislature might, if it saw fit, make a branch of the University and place under the supervision of the Regents of the University. It is evident, therefore, that abolition of the Board of Regents of the University was not intended by the writers of the Constitution.

4. 1875: The Constitution of 1875 provided for separate boards for the University and the Agricultural and Mechanical College. The University Board provided for consisted of two members from the Congressional district in which the University was located and one from each of the other Congressional districts in the State. The members were made appointed by the Governor, "by and with the advice and consent of the Senate," for terms of six years. The Governor was made, *ex officio*, President, and the Superintendent of Education, *ex officio*, a member, of each of the Boards of Trustees.

The General Assembly was prohibited, by Section 10 of Article XIII of the Constitution, from changing the location of either the state university or the agricultural and mechanical college, except by a vote of two-thirds of the members of the General Assembly.

B. FORMER STATUTORY PROVISIONS

1. 1820: "The University of the State of Alabama" was established by an Act passed December 18, 1820 (Toulmin, *Digest of Laws*, 1823, pp. 547-49). By this Act three commissioners were to be appointed by the Governor, for each county containing lands reserved by the United States for a seminary of learning, who were given authority to lease the lands.
2. 1821: (*Ibid.* pp. 552-56). An Act passed December 18, 1821 provided, "That his excellency the governor, *ex officio*, together with twelve trustees, two of whom shall be elected from each judicial circuit by joint ballot of both houses of the general assembly, and who shall continue in office for the term of three years, shall constitute a body politic and corporate, in deed and in law, by the name of *The Trustees of the University of Alabama*" The Governor was made, *ex officio*, the President of the Board of Trustees. The Board was authorized to recommend a site for the location of the University and the Legislature was to determine the location of the University by a joint ballot of both Houses. Other provisions related to the sale of land, the erection of buildings, etc. The Trustees of the University were also directed to select a site for a female institution to be a branch of the University and to be "governed by the same laws, so far as may be applicable." Professors were made ineligible to membership on the Board.

Section 7 of the Act of 1821 read as follows: "And be it further enacted, That no person shall be excluded from any liberty, liberties, immunity, office, or situation in said university, on account of his religious persuasion, Provided, he demean himself in a sober, peaceable and orderly manner, and conform to the rules and regulations thereof."

3. 1822: An Act passed December 24, 1822, (Toulmin, *Digest of Laws*, 1823, pp. 561-66) gave the Board of Trustees power to fill vacancies occurring during the recess of the General Assembly, the appointments to continue "until vacated by an election to be made by the general assembly at their next session." This act also provided

for six additional trustees, "who shall reside within fifty miles of the University," to be elected by the General Assembly as soon as the site of the University be selected. These six additional trustees were prohibited from voting upon the subject of appropriation for buildings until six months after the buildings had been commenced. The concurrence of seven members of the Board was made necessary to the transaction of any business "other than that especially assigned as the cause of the meeting;" an annual meeting at the time of conferring degrees was directed and the President of the University, "together with two of the trustees, or three of the trustees without the president," was empowered to call occasional meetings.

Other sections of the Act of 1822 empowered the Trustees in regard to election of officers, sale of lands, and investment of funds.

An Act of December 26, 1822, (*Ibid.* pp. 567-568) allowed the Trustees three dollars per day for their services, for each day engaged in, and also three dollars for every twenty-five miles traveled to and from the place of meeting.

4. 1843: An Act of 1843, (Clay's *Digest of Laws*, 1843, p. 586) made the Governor of the State a full member, *ex officio*, of the Board, and President of the Board.
5. *The Code of Alabama*, 1852, (Sections 834-852) contains the following items of change in addition to the previous statutory provisions: the Judges of the Supreme Court and the President of the University were made trustees by virtue of their offices; the term of office was made six years; no person under thirty years of age and who did not reside in the circuit for which he was chosen, was eligible as a trustee; six trustees, with the Governor, or seven, without the Governor, constituted a quorum; any trustee absent from one entire regular meeting of the Board and also absent at the commencement of the ensuing regular term, or guilty of any gross immorality, was thereby, no longer a member of the Board; "No sectarian tenets, or principles must be taught or inculcated at the University, by any officer or instructor therein."

6. *The Revised Code of Alabama*, 1867, contains the following changes and additions to the preceding statutory provisions (Sections 1001–24): Law of 1858 provided that the Board consist of “four trustees from the circuit in which the University is located, (only two of whom shall be residents of Tuscaloosa county), and one from each of the other circuits”; the Governor, Judges of the Supreme Court, and the President of the University, were continued as trustees by virtue of their offices; the Trustees, were, as formerly, to be nominated by the Governor and confirmed by the Senate.
7. Beginning with the Constitution of 1875 the provisions in regard to the membership of the Board were made a part of the Constitutions (See Synopsis of Constitutional Provisions of 1875, preceding, and the Constitutional Provisions of 1901 now in force). No attempt has been made in this historical summary to do more than synopsize statutory changes in regard to the Board of Trustees; no attempt is therefore made to trace the development of the body of statutory provisions at present in force and contained in the *School Code* of 1927.

JUDICIAL DECISIONS

Public Character. The University of Alabama is a public corporation, wholly subject to control by the State. *Trustees of the University of Alabama v. Winston*, 5 Stew. and P. (Ala.) 17 (1833).

Continuity of the Corporation. The corporation created by the Act of 1829, under the style of the “Trustees of the University of Alabama”, has not been dissolved, or a new corporation created in its stead, by force of subsequent legislation or the Constitution of 1868, but its corporate rights and powers have continued unimpaired. *Trustees of University v. Moody*, 62 Ala. 389 (1878).

A Corporate Agency of the State. The University of Alabama is a part of the State as a public corporation, and the title to the land granted by the United States for the benefit of the university is in the State as trustee, and the board of trustees

of the university is the agent of the State. *Cox v. Board of Trustees of University of Alabama*, 161 Ala. 639, 49 So. 814 (1909).

Tutor's Contract. When the University has published an ordinance requiring its tutors to hold their offices for a term of two years, unless permitted by the executive committee to resign, and another ordinance fixing their salaries at \$1,000 per year, a tutor thus employed has a contract with the university which protects him against reduction of his salary within the two years without his consent. *Trustees of the University of Alabama v. Walden*, 15 Ala. 655 (1849).

Appointment of Trustees under Earlier Charter. When a vacancy occurred in the board of trustees when the Senate was not in session, the Governor had no power to make an appointment without senatorial confirmation. *State ex rel. Little v. Foster*, 130 Ala. 154, 30 So. 477 (1901).

Early Status of the Medical College of Alabama. The charter of 1859, granted to the Medical College of Alabama, contained a provision that it could be altered or repealed only on application of not less than two-thirds of the board of trustees. This provision was an inviolable contract between the State and the college, negating the idea of absolute control of the college by the State. Hence the college was within the meaning of Section 73 of the Alabama Constitution, which provided that "no appropriation shall be made to any charitable or educational institution not under the absolute control of the State, other than normal schools established by law for the professional training of teachers for the public schools of the State, except by a two-thirds vote of all the members elected to each House." *State ex rel. Medical College of Alabama v. Sowell*, 143 Ala. 494, 39 So. 246 (1905).

Note: Subsequent to the above decision, the dissolution of the corporation known as the Medical College of Alabama was effected, and the college is now a department of the University of Alabama, under the complete ownership, management and control of the board of trustees of the university.

Removal of Medical Department from Mobile. The direction to the State University Trustees (Acts of 1915, p. 133) to remove the university medical department from Mobile whenever the Council on Medical Education of the American Medical

Association informs them that it proposes to lower the classification of such medical department, is not an unconstitutional delegation of legislative power, as the act merely authorizes an ascertainment of a status on a highly expert authority. Furthermore, the act does not contravene the constitutional provision that the location of the university shall not be changed except upon a vote of two-thirds of the legislature. *Stevens v. Thames*, 204 Ala. 487, 86 So. 77 (1920).

UNIVERSITY OF ARKANSAS

FAYETTEVILLE, ARKANSAS

A state university founded in 1871 as the Arkansas Industrial University. Now consists of the College of Liberal Arts and Sciences, College of Agriculture, College of Engineering, College of Education, School of Law, School of Business Administration, Graduate School, all at Fayetteville, and the School of Medicine at Little Rock. There is also a General Extension Service. Endowment in 1930, \$132,000. Income from all sources, \$1,467,000, of which more than half is from state appropriations, and more than one-fourth from Federal appropriations. This is one of the few institutions whose governing boards have power to compel the attendance of witnesses, and power to remove their own members for any cause deemed sufficient.

LAWS RELATING TO THE UNIVERSITY OF ARKANSAS

STATUTORY PROVISIONS¹

NAME

SECTION 4820. The name of the Arkansas industrial university is hereby changed to the University of Arkansas. *Act March 8, 1899.*

BOARD OF TRUSTEES

SECTION 4821. The board of trustees of the University of Arkansas shall consist of as many members as there are congressional districts in the State and one member shall be appointed from each district. The Governor, by and with the consent of the senate, shall appoint the said trustees, who are to be chosen from the agricultural, mechanical, commercial and literary pursuits of life as nearly as possible, and who shall hold their office for a term of six years from the date of their appointment and until their successors shall be qualified.

SECTION 4822. The terms of office shall be arranged however, so that one-third of said board of trustees or as near one-third as possible shall be appointed every two years, and in case of the creation of an additional congressional district in the State, the governor, by and with the consent of the senate, shall appoint a member of said board of trustees from such congressional district, whose term of office shall expire nearest to the end of a period of six years from the date of such additional appointment. *Provided*, the Superintendent of Public Instruction shall be *ex officio* member of said board, without compensation, except his actual expenses.²

¹Kirby, W. F. and Castle, J. T. *A Digest of the Statutes of Arkansas*, 1916. This collection of laws, relating to the University of Arkansas is incomplete in respect to the following sections contained in Kirby and Castle's Digest:

Sections 4858-4864, relating to "Branch Normal College"

Sections 4865-4874, relating to "Medical Department"

Sections 4875-4906, relating to "Experiment Station"

Sections 4907-4910, relating to "Hog Cholera Serum"

Sections 4911-4915, relating to "Permanent Endowment Fund"

²Statutory provisions and changes in regard to the University of Arkansas have been numerous and far-reaching since the initial act of 1871 (*Laws of Arkansas*, 1871, pp. 203-212.) Only those changes relating to the membership of the board of trustees will be synopsisized. The acts referred to, and others besides, pertain to other topics as well.

The Act of 1871 (*Laws of Arkansas*, 1871, pp. 203-212) first making provision for the establishment of the Arkansas Industrial University, specified a

SECTION 4823. The Governor shall be *ex officio* president of said board and in all cases of tie votes shall cast the deciding vote, and in his absence the board shall elect a presiding officer. A less number than a quorum may adjourn from time to time. *Provided*, nothing in this Act shall be so construed as to affect the term of office of any member of said board of trustees who was appointed and qualified prior to the passage of this Act, except where there may be more than one member on the board of trustees from the same congressional district, in which case their offices shall be declared vacant and a new appointment made so that there may be only one member from each congressional district. *Act March 12, 1907, p. 192.*

SECTION 4824. The board shall keep or have kept a record showing number of students enrolled, the daily average attendance at class work for each month and for the term; the number of teachers employed and their salary; the teachers' daily attendance on and absence from class work and the number of hours each day the teacher is required to teach each day in each department. This record shall be open to any citizen at all reasonable hours.

SECTION 4825. The board shall report to each session of the Legislature the number of students enrolled, the daily average attendance on class work for the month and for the term; the number of teachers employed and their salary and the hours each teaches each day, and their absence from and attendance on class work.

board consisting of one trustee for each judicial circuit, elected by the legislature, or, in case of failure on the part of the legislature to elect, the governor was authorized to appoint one trustee for each judicial circuit. The state superintendent of education was to serve, *ex officio*, as chairman of the board.

An act of 1873 (*Laws of Arkansas*, 1873, pp. 65-67) empowered the board to remove any member of the board provided as many as five trustees voted for removal. The governor was empowered to fill the vacancies created by removals.

By an act of 1874, (*Laws of Arkansas*, 1874, pp. 39-41) the board created in 1871 was vacated and seven persons appointed to serve with the Governor of the State and the President of the University as members, *ex officio*. A majority were to constitute a quorum and vacancies occurring while the legislature was not in session were to be filled by the Governor.

An act of 1883, (*Laws of Arkansas*, 1883, p. 97) provided for a board of six members, appointed by the Governor "with the advice and consent of the Senate, one to be selected from each Congressional District and one from Washington county." The Governor, the State Superintendent of Public Instruction and the President of the University Faculty were made members, *ex officio*.

An act of 1887, (*Laws of Arkansas*, 1887, pp. 179-184) provided for a board of six appointed by the Governor, "with the advice and consent of the Senate," one from each Congressional District, and one from the State at large, "to be composed of members to be as equally divided as may be between agricultural, mechanical and literary pursuits of life, who shall hold their office for the term of two years." The Governor, alone, was given *ex officio* membership. This section was amended, 1891, (*Laws of Arkansas*, 1891, pp. 151-53) to repeal the clause, "and one from the state at large," and changing the term of office to six years.

SECTION 4826. A failure to keep or have kept the above record and to report to the Legislature as herein provided, shall be a misdemeanor upon the part of each member of the board. *Act March 29, 1913, p. 965.*

SECTION 4827. Said board is made a body politic and corporate, and shall have all the powers of a corporate body, subject to the constitution and laws of the state of Arkansas, and possess all the power and authority now possessed by the board of trustees of said university under existing laws, and shall make and subscribe an affidavit before entering upon their respective duties, to faithfully, diligently and impartially discharge the duties of their office. *Act March 30, 1887, sec. 2.*

SECTION 4828. The board of trustees shall have power to prescribe all rules and regulations for the government and discipline of said university, subject to the provisions of this chapter, and such other acts of the general assembly as may hereafter be prescribed. *Ib., sec. 4.*

SECTION 4829. The board of trustees shall cause to be made an annual report of the operations and conditions of the agricultural and mechanical departments of said university, which shall include:

First. A statement of the number of acres in cultivation on the college farm, the kind of crops raised and the number of acres of each kind.

Second. The manner of the preparation of the soil for the various crops, methods of seeding and planting, kind and variety of seeds, manner of cultivation and of harvesting.

Third. The several kinds and description of all implements used in the various stages of the different crops, with reports on their utility and adaptation for the purposes used.

Fourth. The time of preparation of the soil, sowing, planting, cultivating and harvesting, and a general statement of the weather and its influence upon the several crops.

Fifth. The kinds of fertilizers used, and crops to which they were applied, the time and manner of application, and the several results.

Sixth. A detailed and systematic account of the number of days' work, of ten working hours each, of men and teams in the production of each separately treated crop; said statement of labor to be in three divisions: First, up to the time the seed are deposited in the ground; secondly, during cultivation; thirdly, while harvesting and preparing the crop for market.

Seventh. A full and accurate yield per acre, by weight or measure, of all crops raised on the farm, distinguishing between the several kinds of treatment as to fertilizers used, and depth of plowing, difference of cultivation, times of harvesting, kinds or variety of seed used.

Eighth. Kind and quantity of machinery and tools used in the mechanical department; the kind and quality of the products of each shop or division of said department and an approximate cost of production of each article manufactured. *Act March 30, 1887, sec. 10.*

SECTION 4830. The board of trustees may sell any land donated to the university by individuals, and when the purchase price is paid to the treasurer of the university, the president, and secretary of the board shall execute a deed conveying the lands to the purchaser. *Act May 23, 1901.*

SECTION 4831. The board of trustees shall meet annually, and shall have power to hold adjourned meetings when the business of the university actually requires it, or the president of the board may call a meeting of the board, when he is satisfied the interests of the university require it, or when five members of the board petition him so to do. *Act May 30, 1874, sec. 4.*

SECTION 4832. The annual meetings of said board shall be at the University building on Monday of the last week of the commencement exercises of each year. *Act March 6, 1875, sec. 1.*

SECTION 4833. The president of the board shall attend the meetings of the board and shall perform all such duties as are herein required or may be directed by said board, without salary or fees or any compensation whatsoever, except such as he now receives, for other services for the state; but his own and the trustees' necessary traveling expenses and board bills, and other necessary incidental expenses in carrying this chapter into effect, shall be paid by the state, upon the official certificate of the person incurring such expense being approved by the president of the board, which shall be a voucher in the office of the auditor of state. Said trustees shall each receive two dollars and fifty cents for each day necessarily consumed on duty as such trustees, payable as above provided for. *Act March 27, 1871, sec. 12, as modified by subsequent legislation.*

SECTION 4834. Said board of trustees shall fix, and from time to time regulate, the fees, allowances, salaries and wages to be paid architects, inspectors, professors, teachers, agents, committees, servants or other necessary employees; and they shall observe rigid economy in such expenditures.³ *Ib., sec. 16.*

SECTION 4835. The board of trustees of the university of Arkansas, or the president of the university, may cause a bond to be executed to the United States, or to any person designated by the war department, for the purpose of securing the use of arms and accoutrements for the military department of the

³There is a manifest repugnancy between parts of this section and section 4847; but as all of the section is not repealed, only that part which is superseded by section 4827 in regard to the oath, is omitted.

university and for the return of the same. Such bond may be executed by any guaranty or surety company acceptable to the United States, and for such amount and on such conditions as may be required, and the costs of executing the same shall be paid from any funds of the university not otherwise appropriated. *Act April 26, 1901.*

SECTION 4837. The board of trustees shall make a report to the Legislature, showing by items how each appropriation is expended. *Act March 29, 1913, p. 965.*

REMOVAL OF MEMBER FROM BOARD OF TRUSTEES⁴

SECTION 4838. The board of trustees, for any cause by them deemed sufficient, shall have power, by a majority vote taken at any meeting, to remove any member from said board. Provided, no member shall be so removed without as many as five of such trustees voting for such removal; and, when any member of said board shall be so removed, the votes of the trustees shall be recorded, and the president of the board shall make a certificate showing the result of such vote and transmit the same without delay to the governor, who shall at once declare the commission which had been issued to such removed trustee vacated, and appoint and commission some competent man to fill the vacancy so occasioned.

SECTION 4839. The said board of trustees are fully empowered and authorized, either as a board or through any committee they may select or appoint, to inquire into and fully investigate any and all charges that have been or may be preferred against any trustee of said board, or any member of any committee appointed by or under the direction of said board, or any contractor, architect, builder, employee, agent or other person acting by agreement with or authority of, or under, said board of trustees, or any of the committees of said board, in any capacity whatever; and for the purposes of such investigations or inquiry, said board, or any committee appointed by them, shall hold meetings in the state at such time and place as may be designated by the board, or by the committee so appointed, and the chairman of the executive committee of said board, for the time being, shall have full and ample power to issue all necessary process for summoning and compelling attendance of witnesses before such board or committee, and may impose

⁴This act was passed when the board consisted of sixteen members elected by the general assembly, one from each of the then judicial districts, of which board the superintendent of public instruction was *ex officio*, president. Whether it is applicable to the present board, and whether section 4839 is valid, is questionable. The act would be entirely omitted but for the fact that section 17, *act of March 30, 1877*, indicates that the legislature did not contemplate a repeal. Hence it is left for construction.

upon all witnesses who refuse to obey such process, or to testify fully and explicitly before such board or committee in reference to any and all such matters as may be the subject of inquiry, all the pains and penalties that might or could be imposed upon such witness by the circuit court in any case if he were to fail and refuse to appear and testify before the proper circuit court of his county, in a cause or matter legally pending therein, after being duly summoned to so appear and testify therein; and said process, issued by the chairman of said executive committee, may be directed to any sheriff, coroner or constable in this state; and if such officer fails, neglects or refuses to execute such process, he shall be subject to all the forfeitures, pains and penalties which might or could be imposed upon him for failing, neglecting or refusing to serve necessary or proper process from a circuit court in his own county; and such fine, imprisonment and penalties as can be so assessed shall be enforced and carried out upon the order of such chairman of the executive committee, which chairman shall be required to have no commission to so act, except as a member of the board, and a certificate of his election or appointment to such place by the board of trustees or the president of such board.

SECTION 4840. The material parts of all examinations and inquiries had by any committee shall be reduced to writing and laid before the board for their action; and process under this act shall run in the name of the state, and officers and witnesses shall execute and obey the same without any advanced fees or compensation, and their accounts or claims for such service or attendance, or other costs arising in such investigation, shall be presented to said board of trustees, and they shall, through their president, order certificates issued upon their treasurer for reasonable compensation. *Act April 5, 1873.*

SECTION 4841. It shall be the duty of the board of trustees to apportion the number of beneficiaries who shall be admitted as students in the university without tuition, among the several counties of the state according to population, and to notify the county judge of each county of the number apportioned to the county at least two months prior to the beginning of each regular annual session of the school; and it shall be the duty of the county judge to appoint from the actual residents of the county the number of beneficiaries to which it may be entitled, a preference being given to those noted for diligence and proficiency in study; and the appointments so made shall be entered of record. If the judge of any county shall fail to appoint its quota of beneficiaries, or if those appointed shall fail to attend, the president of the university shall appoint such beneficiaries to the full number authorized by law from other counties having their full quota. *Provided*, such appointments

shall be vacated on application of the county judge of a county so failing to fill its quota. *Act April 19, 1895.*

SECTION 4842. Any vacancies in the number of beneficiaries during the terms of the university shall be filled by appointment by the judge of the county court. Any beneficiaries appointed, as herein prescribed, shall comply with the rules and regulations provided by the board of trustees in reference to such beneficiaries.

SECTION 4843. It shall be the duty of the judge of the county court, immediately upon receiving notification from the board of trustees as above provided, to give notice in the manner prescribed by law for the publication of legal notices, of the number of beneficiaries allowed to the county, and of the time, manner and place of making appointments to the same, and no person shall be admitted to the said university as a beneficiary who has not been appointed in accordance with the provisions of this section.

SECTION 4844. By section 11, act March 30, 1887, provision was made for the erection of dormitories for the use of the beneficiaries, and provided that if the beneficiaries were not sufficient in number to fill such dormitories, the president may permit other students to occupy the surplus room.

SECTION 4845. Females may be received as beneficiaries. *Act March 18, 1889, amending sec. 5, act March 30, 1887.*

PURCHASING AGENT

SECTION 4916. The Board of Trustees may employ a purchasing agent and registrar at a salary not to exceed fifteen hundred dollars per year, who shall give bond in the sum of ten thousand dollars conditioned for the faithful performance of his duties, and for the faithful accounting for all funds handled by him, the salary to be paid out of the maintenance funds of the various departments of all the divisions of the University located at Fayetteville. All purchases for the University shall be made through this purchasing agent, and he shall before making purchases obtain competitive bids wherever possible and practicable. The purchasing agent shall perform such other duties as shall be required of him by the Board of Trustees.

SECTION 4917. Each employee of the institution shall present his or her account at the end of each month to the financial officer of the University which, when allowed, shall be so endorsed and filed with the Auditor of the State, who shall draw his warrant on the Treasurer for the sum due, which shall be paid by the Treasurer out of any funds appropriated for that purpose.

SECTION 4918. All persons who shall sell any goods, wares

or merchandise, or supplies of any character for the use of the State University, or any of its departments, or who shall perform any services for the same, which shall be charged against said institution, shall be required at the end of each month, or oftener, to present to the financial officer of the University an itemized account and the claimant, or his agent, shall append to his demand an affidavit of its justice, which shall be forthwith examined by the financial officer of the University. If found correct the same shall forthwith be marked correct and shall then be forwarded by the financial officer of the University to the Auditor of State, and filed by him, and he shall draw his warrant on the Treasurer for such sum due, which shall be paid by the Treasurer out of any funds appropriated for the purpose.

SECTION 4919. All accounts filed for goods or supplies furnished shall be made in duplicate, and in itemized form and a copy retained in the office of the financial officer of the University, and a copy to be filed with the Auditor of the State as a permanent record.

SECTION 4920. No claim whatsoever against the University of Arkansas, or any of its departments shall be allowed or paid from any of the funds appropriated by the State in any other manner than herein provided, and the Auditor of the State is hereby forbidden to draw warrant on the Treasurer for the payment of any money on any account for or against the University, except upon an itemized statement and in the manner prescribed herein.

SECTION 4921. All claims allowed and ordered paid by the financial officer of the University, as herein provided, shall be listed and a copy thereof submitted to the Board of Trustees at each meeting for their investigation and approval.

SECTION 4922. The provisions of sections 4918, 4919, 4920 shall not apply to student labor fund appropriated by the General Assembly, nor to student fees, student deposits and other sums collected at Fayetteville, nor to any funds except those held in the State treasury for the use of the University. *Provided*, not more than one thousand dollars shall be drawn at any one time [from] the State treasury for this purpose.

SECTION 4923. Any officer or employee who shall violate any of the provisions of this Act shall be fined any sum not less than one hundred dollars nor more than one thousand dollars and immediately removed from office. *Act March 27, 1915, p. 1075.*

APPROPRIATIONS FOR UNIVERSITY

SECTION 4924. The General Assembly, in appropriating moneys for the benefit of said university, shall specify the precise amount that it intends to appropriate for each and every pur-

pose, and the trustees of said institution shall apply each sum as thus directed, and in no other way. *Act February 20, 1883.*

SECTION 4925. No appropriation made for any specific purpose shall be used for any other purpose, and the power of contracting debts by the board of trustees in the absence of any appropriation is expressly forbidden. *Act April 12, 1895.*

SECTION 4926. No appropriation made for a specific purpose shall be used for any other purpose; and the board of trustees, in their biennial report, shall make a tabulated verified statement, showing how each appropriation herein made and all other funds of the university under their control have been expended. *Act May 8, 1899.*

SECTION 4927. The matter of leaves of absence of the faculty shall rest with the board of trustees. *Provided*, no person shall be entitled to any salary when on leave of absence, except on university business. *Act May 31, 1909, p. 873.*

JUDICIAL DECISIONS

Status of an Employee as Public Officer. The Trustees of the University of Arkansas created the "office of Vice Director and Pomologist of the Agricultural Experiment Station" and elected the plaintiff thereto for a specified term and salary. Before the term expired, the Legislature abolished this office, and prohibited the allowance of any pay therefor. It was held that the plaintiff was an officer, and not a mere employee under contract, and consequently the act of May 23, 1901, by which this office was abolished was not unconstitutional as impairing the obligation of a contract, since the rights of an officer grow out of the law and not out of contract, and the Legislature may amend or repeal the law. *Vincenheller v. Reagan*, 69 Ark. 460, 64 S. W. 278 (1901).

Appointment of Treasurer of the University. The appointment of a public officer by a board authorized by law to do so does not become final until the termination of the meeting at which the appointment is made, being subject to reconsideration and revocation before that time; but where one was declared elected treasurer of the state university by a majority of the board of trustees authorized by law to appoint him, to which declaration no objection was made, he was lawfully appointed to the office, and entitled thereto. *Allen v. Morton*, 94 Ark. 405, 127 S. W. 450 (1910).

UNIVERSITY OF BUFFALO

BUFFALO, NEW YORK

A co-educational, non-sectarian institution, privately controlled. First chartered in 1846, and consisted merely of a School of Medicine until 1886. Now consists of the College of Arts and Sciences (1913), the School of Medicine (1846), School of Pharmacy (1886), School of Law (1891), School of Dentistry (1892), the Summer Session (1915), the School of Business Administration (1927), the School of Education (1931), the Library Science Course and the Five-Year Course in Social Work. In 1930 the endowment was in excess of \$4,675,000, and the annual income from all sources approximately \$905,000. The university was originally chartered as a stock corporation, but is now a non-profit corporation.

LAWS RELATING TO THE UNIVERSITY OF BUFFALO

AN ACT TO INCORPORATE THE "UNIVERSITY OF BUFFALO"
PASSED MAY 11, 1846, BY A TWO-THIRDS VOTE

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. All persons who shall become stockholders pursuant to this act shall be, and they are hereby constituted a body corporate by the name of "The University of Buffalo," for the purpose of promoting literature and science by establishing and maintaining a university to be located in the city of Buffalo.

SECTION 2. The capital stock of said corporation shall not exceed one hundred thousand dollars, and be divided into shares of twenty dollars each, and Albert H. Tracy, Millard Fillmore, Joseph G. Masten, Thomas M. Foote, Isaac Sherman, Nathan K. Hall, Gaius B. Rich, Ira A. Blossom, James S. Wadsworth, William A. Bird, George W. Clinton, George R. Babcock, George C. White, Aaron D. Patchin and James Hollister, or some of them, shall, within thirty days after the passage of this act, open a book for subscriptions to the said capital stock, and shall and may receive subscriptions thereto, from time to time, until the election of the council of such university; after the election of the council, such council or any member or officer thereof to be designated or appointed by them, may continue to receive subscriptions to such capital stock. Two dollars on each share of stock subscribed shall be paid at the time of subscribing. The stockholders shall, in person, or by proxy, be entitled to one vote for each share of stock held by them, in the election of the members of the council of such university as provided for in this act.¹

SECTION 3. As soon as the sum of twenty thousand dollars of the said capital stock shall have been subscribed, it shall be the duty of the persons named in the second section of this act, or a majority of them, to give at least ten days' notice of the time and place, when and where the stockholders of said corporation

¹By an act of 1909, permission was granted for the surrender and cancellation of stock held by individuals and the University was authorized to redeem such stock as was not donated. Individuals were given the right to bring judgment against the University to compel it to redeem outstanding stock after a majority of the stock was cancelled and it was further provided that stock not surrendered within two years be automatically cancelled. The University was to cease to be a stock corporation on cancellation of majority of stock. *Laws of New York*, 1909, pp. 1339-41.

will meet to elect sixteen of the stockholders of said corporation, to constitute the council of such university. Such notice shall be given by publishing the same in two of the public newspapers printed and published in the said city of Buffalo. The persons named in the second section of this act shall be inspectors of such election; shall certify the result, and shall, immediately after such election, divide the members of the council, by lot, into four classes of four each; the first of which classes shall hold their offices for one year, the second for two years, the third for three years, and the fourth for four years, and until others shall be elected in their stead. An election shall be held by the shareholders on the first Wednesday of July in each year, to supply the places of the class whose offices then expire, and all other vacancies occurring the preceding year. In case the shareholders shall neglect to make such annual election, the council may supply all vacancies remaining in the board. The persons so appointed shall hold their offices as if chosen by the shareholders, and the council may also fill its own vacancies occurring previous to an annual election. No one religious sect shall ever have a majority of the board.²

SECTION 4. In addition to the members of the council authorized to be elected by the last section, each of the several faculties of said university shall appoint one member of such council, who shall hold his office during the pleasure of the faculty appointing him; and the mayor and recorder of the city of Buffalo, for the time being, shall be *ex officio* members of such council.

²Amended, *Laws of New York*, 1920, Chap. 271, pp. 799-800, as follows:

Section 1. Section three of chapter one hundred and eighty-nine of the laws of eighteen hundred and forty-six, entitled "An act to incorporate the University of Buffalo," is hereby repealed and a new section three inserted therein to read as follows:

Section 3. On and after May first, nineteen hundred and twenty, the council of the University of Buffalo shall consist of thirty-six members, together with the mayor of the city of Buffalo, and the deans of the several faculties of the university who shall be *ex officio* members of such council without voting power.

Not less than one-third of the members of such council shall be chosen by vote of the alumni of such university at such times and in such manner as its by-laws shall prescribe; and representatives so chosen by the alumni shall at all times constitute not less than one-third of the membership of such council.

The term of office of the members of such council shall be four years, provided, however, that at the first meeting of such council following May first, nineteen hundred and twenty, the length of the terms of office of its then members shall be determined by lot in such manner that thereafter the terms of one-fourth of all of such members shall expire annually by limitation.

Such council by appropriate by-laws, not in conflict herewith, shall provide for the selection of its members and for the filling of vacancies in its membership from time to time.

Section 2. This act shall take effect immediately.

SECTION 5. The estate, affairs and business of the said corporation shall be controlled and managed by the said council. Such council shall have power to appoint its own officers, and all the officers of the university and corporation; and any professor or officer appointed by such council may be removed by an affirmative vote of a majority of all the members of such council. The council shall also have power to establish ordinances and by-laws not contravening the laws or constitution of this state or the United States, and to expel any members of such university for a violation thereof.

SECTION 6. Persons of every religious denomination shall be equally eligible to all offices and appointments.

SECTION 7. Thirteen members shall be a quorum of the council for the transaction of business, but no real estate shall be conveyed, nor appointments to office made, except to supply vacancies in the council, other than by an affirmative vote of a majority of all the members of such council.³

SECTION 8. The university may grant to students under its charge diplomas or honorary testimonials, in such form as it may designate. It may confer such literary honors, degrees and diplomas as are usually granted by any university, college or seminary of learning in the United States; and it may also, on the nomination of the medical faculty, and with the written consent of at least three of the curators, authorized to be appointed by this act, grant diplomas conferring the degree of doctor of medicine, subject however to the restrictions and limitations mentioned in this act. The graduation and diploma fees paid by medical students shall not be paid or belong to the medical faculty of said university, but shall go into the general fund of the university, so that the medical faculty shall receive no pecuniary benefits from an increase of the number graduated.

SECTION 9. The council, whenever they shall organize the medical department of such university, shall appoint not less than twenty persons, being practising physicians and surgeons, to be curators of the medical department of said university, and the president of the medical society of the county of Erie, and the censors of the state medical society appointed for the senatorial district in which said university shall be situated shall be *ex officio* curators thereof.⁴

SECTION 10. The council may separately organize any or either of the departments of the university whenever they shall

³Amended, 1847, to make ten instead of thirteen a quorum for business. *Laws of New York*, 1847, p. 28.

⁴The "office of curator of the medical department of the university of Buffalo" was abolished in 1905 and "all the powers or duties vested in or imposed upon said curators by chapter one hundred and ninety-three of the laws of eighteen hundred and forty-six, shall on and after the passage of this act be vested in and exercised by the faculty of the medical department of the university of Buffalo." *Laws of New York*, 1905, pp. 1235-36.

think it expedient. Donations or subscriptions to the capital stock of such corporation, may be made for the use or benefit of either the academical, theological, medical or law department of such university, or for furnishing a library for such university, or either of such departments; and when so expressly made shall be appropriated to the use of such department or library.⁵

SECTION 11. The provisions of the twenty-first section, of title seven, chapter fourteen, of the first part of the Revised Statutes, shall not be deemed to apply to the diplomas conferring the degree of doctor of medicine, granted by the council of such university upon the recommendation of the medical faculty established therein, and written consent of at least three of the curators thereof, and of at least two of the persons who shall be curators *ex officio* under the ninth section of this act; but no person shall receive such diploma unless he shall have pursued the study of medical science for at least three years after he attained the age of sixteen years, with some physician and surgeon, duly authorized by law to practice his profession; and shall also after that age have attended two complete courses of all the lectures delivered in some incorporated medical college, the last of which courses shall have been delivered by the medical faculty of said university; and all the provisions of said title seven, which require an attendance upon the lectures delivered at an incorporated medical college, shall be deemed to apply to and include the lectures delivered by the medical faculty of the university established by this

⁵By an act of 1859, the University of Buffalo was authorized to establish and maintain an academical school, "preparatory to a collegiate education and to provide therein, or in its academical department, when founded, or both, for instruction in practical mechanical science, mining, engineering, and in the science of teaching." The University was authorized to receive gifts and bequests for the purpose. Real estate acquired in the city of Buffalo for the purpose and building erected thereon were exempted "from sale on execution for debts thereafter contracted by said university, so long as the same shall be used by said university for the purposes of said university, and the said university shall not encumber the same by mortgages or otherwise." The Council of the University was empowered to subject the academical preparatory school to visitation and control by the Regents of the University of New York, if they so desired. A two-thirds vote of the Council was declared necessary. *Laws of New York*, 1859, pp. 329-30.

Amended, 1917 (*Laws of New York*, 1917, p. 266) as follows:

Section 10. The council may separately organize any or either of the departments of the university whenever they shall think it expedient. Donations or subscriptions to such corporation, may be made and endowment and trust funds established for the exclusive use or benefit of any department of such university, or for furnishing a library for such university, or either of such departments. When so made or established such donations, subscriptions, endowment or trust funds and the income and increment thereof shall be applied to the exclusive use of such department or library and shall be exempt from any debt or liability incurred by or in behalf of any other department of the university.

act; and the diplomas granted pursuant to this act shall have the force and effect as licenses to practice physic and surgery, as are given by law to the licenses granted by any incorporated medical society in this state.⁶

SECTION 12. The university hereby established shall be subject to the visitation of the regents of the university of this state, in the same manner, and to the same extent as the various colleges in this state; and the diplomas granted by such university shall entitle the possessors to the immunities and privileges allowed by usage or statute to the possessors of like diplomas from any college or seminary of learning in this state. No such diploma shall be conferred by the university, but in conformity with the laws of this state in force at the time of conferring the same.

SECTION 13. The medical faculty of the university hereby incorporated are authorized to appoint a delegate to represent them in the State Medical Society, with all the powers and privileges which delegates from the respective medical colleges of this state possess.

SECTION 14. The corporation hereby created shall possess the powers and be subject to the provisions of the third title, of the eighteenth chapter, of the first part of the Revised Statutes, so far as the same are applicable and have not been repealed.

SECTION 15. The legislature may at any time alter, repeal or modify this act; and if the sum of twenty thousand dollars of the capital stock of the corporation hereby created shall not be subscribed within three years after the passage of this act, this act shall be of no further effect, and shall be deemed repealed and abrogated.

SECTION 16. This act shall take effect immediately.

Note: An act of the legislature which became effective March 12, 1910, authorized the city of Buffalo to enter into a contract with the University of Buffalo for the purpose of providing for the free higher education of inhabitants of the city. However, on April 17, 1911, the Board of Aldermen of the City of Buffalo expressed their unwillingness by a vote of 14 to 9 to enter into a contract proposed under this act. The university receives no financial support from the city.

⁶Amended, 1847, by striking out the words, "and [of] at least two of the persons, who shall be curators *ex officio*, under the ninth section of this act; - - -." *Laws of New York*, 1847, p. 28.

UNIVERSITY OF CALIFORNIA

BERKELEY, CALIFORNIA

A state university founded in 1868 by act of the legislature accepting the gift of all property of the College of California, which was an outgrowth of an academy first founded in 1853 under joint denominational auspices. The seat of the university is at Berkeley, but the University of California at Los Angeles is an important branch of the institution. There is also a Branch of the College of Agriculture at Davis, a Citrus Experiment Station and Graduate School of Tropical Agriculture at Riverside, the Lick Observatory at Mt. Hamilton, the Scripps Institution of Oceanography at La Jolla, and agricultural experiment stations in various parts of the state. The Medical School, College of Dentistry, College of Pharmacy, Hastings College of the Law, and the University Hospital are at San Francisco. The total investments, endowment, and trust funds in 1930 exceeded \$16,870,000, and total annual income was in excess of \$16,170,000. The university is a constitutional department of the state government, "subject only to such legislative control as may be necessary to insure compliance with its endowments . . . and the security of its funds."

LAWS RELATING TO THE UNIVERSITY OF CALIFORNIA

CONSTITUTIONAL PROVISIONS¹ (CONSTITUTION OF 1879)

ARTICLE IX EDUCATION

SECTION 1. Promotion of intellectual improvement. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral and agricultural improvement.

SECTION 9. University fund, creation, management, and application of. The University of California shall constitute a public trust, to be administered by the existing corporation known as "The regents of the University of California," with full powers of organization and government, subject only to such legislative control as may be necessary to insure compliance with the terms of the endowments of the university and the security of its funds. Said corporation shall be in form a board composed of eight *ex officio* members, to wit: the governor, the lieutenant-governor, the speaker of the assembly, the superintendent of public instruction, the president of the state board of agriculture, the president of the Mechanics' Institute of San Francisco, the president of the alumni association of the university and the acting president of the university, and sixteen appointive members appointed by the governor; provided, however, that the present appointive members shall hold office until the expiration of their present terms. The term of the appointive members shall be sixteen years; the terms of two appointive members to expire as heretofore on March first of every even-numbered calendar year, and in case of any vacancy the term of office of the appointee to fill such vacancy, who shall be appointed by the governor, to be for the balance of the term as to which such vacancy exists. Said corporation shall be vested with the legal title and the management and disposition of the property of the university and of property held for its benefit and shall have the power to take and hold, either by purchase or by donation, or gift, testamentary or otherwise, or in any other manner, without restriction, all real and personal property for the benefit of the

¹Edward F. Treadwell, *The Constitution of California, Annotated*, San Francisco: Bancroft-Whitney Co., 1931.

university or incidentally to its conduct. Said corporation shall also have all the powers necessary or convenient for the effective administration of its trust, including the power to sue and to be sued, to use a seal, and to delegate to its committees or to the faculty of the university, or to others, such authority or functions as it may deem wise; provided, that all moneys derived from the sale of public lands donated to this state by act of congress approved July 2, 1862 (and the several acts amendatory thereof), shall be invested as provided by said acts of congress and the income from said moneys shall be inviolably appropriated to the endowment, support and maintenance of at least one college of agriculture, where the leading objects shall be (without excluding other scientific and classical studies, and including military tactics) to teach such branches of learning as are related to scientific and practical agriculture and mechanic arts, in accordance with the requirements and conditions of said acts of congress; and the legislature shall provide that if, through neglect, misappropriation, or any other contingency, any portion of the funds so set apart shall be diminished or lost, the state shall replace such portion so lost or misappropriated, so that the principal thereof shall remain forever undiminished. The university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs, and no person shall be debarred admission to any department of the university on account of sex. [Amendment adopted November 5, 1918.]

[ORIGINAL SECTION]

SECTION 9. The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in the form and character prescribed by the organic act creating the same, passed March twenty-third, eighteen hundred and sixty-eight (and the several acts amendatory thereof), subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments, and the proper investment and security of its funds. It shall be entirely independent of all political or sectarian influence, and kept free therefrom in the appointment of its regents, and in the administration of its affairs; provided, that all the moneys derived from the sale of the public lands donated to this state by act of congress, approved July second, eighteen hundred and sixty-two (and the several acts amendatory thereof) shall be invested as provided by said acts of congress, and the interest of said moneys shall be inviolably appropriated to the endowment, support, and maintenance of at least one college of agriculture, where the leading objects shall be (with-

out excluding other scientific and classical studies, and including military tactics), to teach such branches of learning as are related to scientific and practical agriculture and the mechanic arts, in accordance with the requirements and conditions of said acts of congress; and the legislature shall provide that if, through neglect, misappropriation, or any other contingency, any portion of the funds so set apart shall be diminished or lost, the state shall replace such portion so lost or misappropriated, so that the principal thereof shall remain forever undiminished. No person shall be debarred admission to any of the collegiate departments of the university on account of sex.

Status of University of California under above section. See article Constitutional Law, 5 Cal. Jur. 690; and see the article Universities and Colleges, 25 Cal. Jur. 408.

Provided in the Constitution of 1849

ARTICLE IX EDUCATION

SECTION 4. The legislature shall take measures for the protection, improvement, or other disposition of such lands as have been, or may hereafter be reserved or granted by the United States, or any person or persons, to the state for the use of a University; and the funds accruing from the rents or sale of such lands, or from any other source for the purpose aforesaid, shall be and remain a permanent fund, the interest of which shall be applied to the support of said University, with such branches as the public convenience may demand, for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the legislature, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

STATUTORY PROVISIONS²

TITLE III EDUCATION

CHAPTER I. University of California ARTICLE I. General Provisions

SECTION 1385. **Object of University.** The University of California, located in Alameda County, has for its object general instruction and education in all the departments of

²James H. Deering, *Political Code of California*, Vol. I. San Francisco: Bancroft-Whitney Co., 1932. Section numbers as contained in the Code. (Only those sections basic to the control and administration of the institution have been selected for this collection of laws.)

science, literature, art, industrial and professional pursuits, and special instruction for the professions of agriculture, the mechanic arts, mining, military science, civil engineering, law, medicine, and commerce.

SECTION 1386. Colleges to be maintained. There must be maintained in the university:

One—A college of letters.

Two—A college or colleges of science, including agriculture, mechanics, mining, engineering, chemistry, and such other specialties as the board of regents may determine.

Three—College of medicine and law.

Four—Such other colleges as the board of regents may establish. [Amendment approved 1874; Code Amdts. 1873-74, p. 31.]

SECTION 1387. Scope of college of letters. The college of letters must embrace a liberal course of instruction in language, literature, and philosophy.

SECTION 1388. Course of instruction. Each full course of instruction consists of its appropriate studies and courses, to be determined by the board of regents. [Amendment approved 1874; Code Amdts. 1873-74, p. 31.]

SECTION 1389. President of university. The president of the university is the executive head of the institution in all its departments, except as herein otherwise provided.

SECTION 1390. Duties of president. He must, subject to the board of regents, give general direction to the practical affairs of the several colleges, and in the recess of the board of regents may remove any employee or subordinate officer not a member of any faculty, and supply for the time being any vacancies thus created; and until the regents otherwise direct he is charged with the duties of one of the professorships.

SECTION 1391. Government and discipline. The immediate government of the several colleges is entrusted to their respective faculties, each of which must have its own organization, regulate its own affairs, and may recommend the course of study and the textbooks to be used.

SECTION 1392. Students. Any resident of California of the age of fourteen years or upwards, of approved moral character, may enter himself in the university as a student at large, and receive tuition in any branches of instruction at the time when the same are given in their regular course, on such terms as the board of regents may prescribe.

SECTION 1393. Fees and rates of tuition. An admission fee and rate of tuition fixed by the board of regents must be required of each pupil, except as herein otherwise provided.

SECTION 1394. Same. As soon as the income of the university shall permit, admission and tuition must be free to all residents

of the state; and the regents must so apportion the representation of students according to population that all portions of the state may enjoy equal privileges therein.

SECTION 1394½. Tuition fees for nonresident students. An admission fee and rate of tuition fixed by the regents of the University of California must be required of each nonresident student. The regents shall cause to be computed the actual cost to the university of maintaining one student in each of the respective courses of the several colleges for the period of one year. Each nonresident student shall be required to pay as the rate of tuition the sum provided for by the above computation for the particular course such student is following; provided, that the maximum sum to be paid shall not exceed five hundred dollars; and provided, further, that such sums may be remitted in whole or in part in the case of graduate students in other than professional colleges and schools.

Definition; nonresident. The term "nonresident student" as used in this section shall be construed to mean any person who has not been a bona fide resident of the state of California for more than one year immediately preceding the opening day of a semester during which he proposes to attend the university.

Determination of residence. The residence of each student shall be determined in accordance with the rules for determining residence prescribed by the provisions of section 52 of this code; provided, however, that every alien student who has not made a valid declaration of intention to become a citizen of the United States as provided by the laws thereof, prior to the opening day of a semester during which he proposes to attend the university, shall be deemed to be a nonresident student; and further provided, that nothing herein or in section 52 of this code contained shall be construed to prevent the regents from causing to be classified as a resident student any citizen of the United States, or any person who prior to the opening day of a semester during which he proposes to attend the university has made a valid declaration of his intention to become a citizen of the United States, who has attained his majority according to the laws of the state of California, and who for a period of one year immediately preceding the opening day of a semester during which he proposes to attend the university has been entirely self-supporting and actually present in the state of California, with the intention of acquiring a residence therein, nor from causing to be classified as a resident student any minor child, a citizen of the United States, or any minor child, who, prior to the opening day of a semester during which he proposes to attend the university, has made a valid declaration of his intention to become a citizen of the United States, who does not receive and has not for a period of more

than one year immediately preceding the opening day of a semester during which he proposes to attend the university received, directly or indirectly, any support or financial assistance from his father, providing such minor lives with his mother, who is and has been for a period of more than one year immediately preceding the opening day of such semester actually present in the state of California with the intention of making her permanent home therein.

Powers of attorney for regents. The attorney for the regents of the University of California and any person appointed by him for the purpose of ascertaining the residence status of students and prospective students of the University of California shall have the power to administer oaths or affirmations in connection with the taking of testimony relative to such residence status. [Amendment approved June 5, 1931; Stats. 1931, p. 1351.]

SECTION 1395. Free scholarship. If approved by the board of regents, scholarships may be established in the university by any persons for the purpose of private benefaction or of affording tuition in any course of the university, free from the ordinary charges, to any scholar in the public schools of the state who may distinguish himself in study, according to the recommendation of his teachers, and who passes the examination required for the grade at which he wishes to enter the university.

SECTION 1396. Colleges may be affiliated with university. The board of regents may affiliate with the university any incorporated college of medicine, law, or other special course of instruction, upon such terms as may be deemed expedient; and such college may retain the control of its own property, have its own boards of trustees, faculties, and presidents, respectively; and the students of such colleges, recommended by the respective faculties thereof, may receive from the university the degrees of those colleges.

SECTION 1397. Annual examination for degrees. The examinations for degrees must be annual. Students who have passed not less than a year as residents in any college, academy, or school in this state, and who, after examination by the faculty thereof, are recommended by them as proficient candidates for any degree in any regular course of the university, must be examined therefor at the annual examination; and on passing such examination may receive the degree and diploma for that course, and rank as graduates.

SECTION 1398. Same. All students of the university who have been residents thereat for not less than one year, and all graduates thereof, may present themselves for examination in any course at the annual examinations, and, on passing such

examinations, may receive the degree and diploma of that course. [Amendment approved 1874; Code Amdts. 1873-74, p. 31.]

SECTION 1399. Same. Upon such examinations each professor and instructor of that course may cast one vote, by ballot, upon each application for recommendation to the board of regents for a degree.

SECTION 1400. Degrees to graduates of affiliated colleges. Graduates of the College of California, and of any incorporated college affiliated with the university, may receive the degrees from and rank as graduates of the university.

SECTION 1401. Certificates of proficiency. The board of regents may also confer certificates of proficiency in any branch of study upon such students of the university as upon examination are found entitled to the same.

SECTION 1402. Degrees. The proper degree of each college must be conferred at the end of the course upon such students as, having completed the same, are found proficient therein.

SECTION 1403. Degrees in colleges of letters. The degree of bachelor of arts, and afterwards the degree of master of arts, in usual course, must be conferred upon the graduates of the college of letters.

SECTION 1404. System of manual labor in connection with agricultural college. A system of moderate manual labor must be established in connection with the agricultural college, upon its agricultural and ornamental grounds, for practical education in agriculture and landscape gardening.

SECTION 1405. Sectarian, etc., tests prohibited. No sectarian, political, or partisan test must ever be allowed or exercised in the appointment of regents, or in the election of professors, teachers, or other officers of the university, or in the admission of students thereto, or for any purpose whatsoever; nor must the majority of the board of regents be of any one religious sect or of no religious belief.

ARTICLE II

ENDOWMENT OF THE UNIVERSITY

SECTION 1415. Endowment. The indorsement [endowment] of the university is:

One. **The proceeds of the sale of the seventy-two sections of land** granted to the state for a seminary of learning.

Two. **The proceeds of the ten sections of land granted to the state** for public buildings.

Three. **The income derived from the investments of the proceeds of the sale of the lands** or of the scrip therefor, or of any part thereof, granted to this state for the endowment, support, and maintenance of at least one college where the

leading object shall be—without excluding other scientific and classical studies, and including military tactics—to teach such branches of learning as are related to agriculture and the mechanic arts.

Four. **The income of the fund set apart by “An Act for the endowment of the University of California,”** approved April second, eighteen hundred and seventy, which is continued in force.

Five. [There is no subdivision of this number.]

Six. **The state of California, in its corporate capacity, may take by grant, gift, devise, or bequest,** any property for the use of the university, and hold the same, and apply the funds arising therefrom, through the regents of the university, to the support of the university, as provided in article nine, section four, of the constitution.

Seven. **The regents of the university, in their corporate capacity, may take, by grant, gift, devise, or bequest,** any property for the use of the university, or of any college thereof, or of any professorship, chair, or scholarship therein, or for the library, an observatory, workshops, gardens, green-houses, apparatus, a students’ loan fund, or any other purpose appropriate to the university; and such property shall be taken, received, held, managed, and invested, and the proceeds thereof used, bestowed, and applied by the said regents for the purposes, provisions, and conditions prescribed by the respective grant, gift, devise, or bequest.

Eight. **The regents of the university may invest any of the permanent funds of the university,** which are now or hereafter may be, in their custody, in productive, unencumbered real estate in this state, subject to the power of the legislature to control or change such investments, excepting such as, by the terms of their acquisition, must be otherwise invested.

Nine. **If, by the terms of any grant, gift, devise, or bequest,** such as are described in the preceding sixth and seventh subdivisions, conditions are imposed which are impracticable under the provisions of the Civil Code, such grant, gift, devise, or bequest, shall not thereby fail, but such conditions shall be rejected, and the intent of the donor carried out as near as may be. [Amendment approved 1874; Code Amdts. 1873-74, p. 31.]

Permanent endowment fund, consolidation of funds for, and use of income for current expenses: See Stats. 1877-78, p. 337.

University lands, selection and sale of: Post, Sections 3533-3536.

Subds. 1, 2. Proceeds of lands for seminary of learning and public buildings, disposition of: Post, Section 3535.

Subd. 3. College of agriculture and mechanic arts:**1. Proceeds of sales of lands for: Post, Section 3533.****2. Interest on money from sale of lands inviolably appropriated for at least one: Const., art. IX, Section 9.****Subd. 7. Regents to receive donations: See ante, Section 1432, subd. 5.**

Legislation Section 1415. Enacted March 12, 1872; based on Stats. 1867-68, p. 256, Section 20. Amended by Code Amdts. 1873-74, p. 31.

ARTICLE III**REGENTS OF THE UNIVERSITY**

SECTION 1425. Control of university. The university is under the control of a board of regents, consisting of twenty-four members. [Amendment approved 1909; Stats. 1909, p. 984.]³

³Earlier Provisions for the Control and Administration of the University:

1. The original act, approved March 23, 1868, creating and organizing the University of California (*Laws of California*, 1867-68, p. 252-59) provided for a Board of Regents consisting of twenty-two members, six of whom were members, *ex officio*, eight to be nominated by the Governor, by and with the consent of the Senate and eight "additional honorary members, to be chosen from the body of the State by the official and appointed members . . ." The members, *ex officio*, were as follows: Governor, Lieutenant-Governor, Speaker of the Assembly, State Superintendent of Public Instruction, President of the State Agricultural Society and the President of the Mechanics' Institute of the City and County of San Francisco. The term of the other sixteen members was set at sixteen years. The Governor was made President of the Board. Seven were constituted a quorum. The Board was required to make annual reports to the Governor.

The following are excerpts from the Act of March 23, 1868:

SECTION 11. " . . . No member of the Board of Regents, or of the University, shall be deemed a public officer by virtue of such membership, or required to take any oath of office, but his employment as such shall be held and deemed to be exclusively a private trust; and no person who at the time holds any executive office or appointment under the State shall be a member of said Board, except the Executive officers above mentioned . . . "

SECTION 13. "The Regents and their successors in office, when so incorporated, shall have power, and it shall be their duty, to enact laws for the government of the University, to elect a President of the University and the requisite number of professors, instructors, officers and employes, and to fix their salaries, also the term of office of each, and to determine the moral and educational qualification of applicants for admission to the various courses of instruction. They shall also consider and determine whether the interests of the University and of the students, as well as those of the State, and of the great body of scientific men in the State whose purpose is to devote themselves to public instruction, will not be greatly promoted by committing those courses of instruction which are brief and special to professors employed for short terms, and for only a portion of each year in their special departments, and to be termed non-resident professors; and their decision in that regard may be reconsidered by them as often as they deem it expedient. And it is expressly provided that no sectarian, political or partisan test shall ever

be allowed or exercised in the appointment of Regents, or in the election of professors, teachers, or other officers of the University, or in the admission of students thereto, or for any purpose whatsoever; nor at any time shall the majority of the Board of Regents be of any one religious sect, or of no religious sect; and persons of every religious denomination, or of no religious denomination, shall be equally eligible to all offices, appointments and scholarships."

SECTION 15. "The President of the University shall be President of the several Faculties and the executive head of the institution in all its departments, except as herein otherwise provided. He shall have authority, subject to the Board of Regents, to give general direction to the practical affairs of the several colleges, and, in the recess of the Board of Regents, to remove any employé or subordinate officer not a member of any Faculty, and to supply for the time being any vacancies thus created; and, so long as the interests of the institution require it, he shall be charged with the duties of one of the professorships"

SECTION 18. "The immediate government and discipline of the several colleges shall be intrusted to their respective Faculties, to consist of the President and the resident professors of the same, each of which shall have its own organization, regulate the affairs of its own college, recommending the course of study and the textbooks to be used, for the approval of the Board of Regents, and, in connection with the President as its executive officer, have the government of its students. All the Faculties and instructors of the University shall be combined into a body which shall be known as the Academic Senate, which shall have stated meetings at regular intervals and be presided over by the President, or a President pro tempore, and which is created for the purpose of conducting the general administration of the University and memorializing the Board of Regents; regulating, in the first instance, the general and special courses of instruction, and to receive and determine all appeals couched in respectful terms from acts of discipline enforced by the Faculty of any college. Its proceedings shall be conducted according to rules of order; and every person engaged in instruction in the University, whether resident professors, non-resident professors, lecturers or instructors, shall have permission to participate in its discussions; but the right of voting shall be confined to the President and the resident and non-resident professors. But the Regents shall have power to supervise the general courses of instruction, and on the recommendation of the several Faculties prescribe the authorities and textbooks to be used in the several courses and colleges, and also to confer such degrees and grant such diplomas as are usual in Universities, or as they shall deem appropriate; *provided*, no honorary degree of any college or course shall be granted by the Regents, nor shall any degree, certificate or diploma, for any course or branch of instruction, be granted by the Regents, unless upon examination therefor as prescribed in this Act, except the substituted degrees and diplomas provisionally provided for those having received degrees from the college of California, in case the said college becomes extinct and disincorporates, and for the graduates of affiliated professional colleges as herein otherwise provided."

2. The Political Code of 1872 (Section 1426) states that the sixteen *non-ex officio* members are appointed by the Governor.

3. An amendment to Section 1425 of the Code of 1872, approved March 30, 1874 (*Amendments to the Codes of California*, 1873-74, pp. 191-195) added the President of the University to the Board of twenty-two members, thus, in effect, making the number twenty-three. Minor amendments to other sections of the Code of 1872, relating to the University were also made by the amending act, approved March 30, 1874.

4. SECTIONS 353, 1425 and 1427 of the Political Code of 1872 (these sections having been previously amended 1874 by the addition of the President

SECTION 1426. Sixteen regents appointed by the governor. Sixteen members of the board are appointed by the governor, with the advice and consent of the senate. Their term of office is sixteen years.

SECTION 1427. *Ex officio* members. Eight members of the board hold by virtue of other offices, as provided in section three hundred and fifty-three. [Amendment approved 1909; Stats. 1909, p. 984.]

SECTION 1428. Vacancies. Whenever a vacancy occurs in the board the governor must appoint some person to fill it, and the person so appointed holds for the remainder of the term.

SECTION 1429. President of the board. The governor is president of the board.

SECTION 1430. Quorum. Seven members constitute a quorum of the board.

SECTION 1431. Compensation of regents. Members shall receive no compensation for their services, but shall be entitled to receive their actual and necessary expenses incurred while traveling on the business of the board which shall be payable from the state university fund, upon the order of the board, in the manner provided by law for the payment of other claims and demands against said fund. [Amendment approved 1915; Stats. 1915, p. 46.]

SECTION 1432. General powers and duties of regents. The powers and duties of the board of regents are as follows:

One. **To meet at such times and places as their rules may prescribe,** or at the call of the president of the board.

Two. **To control and manage the university** and its property.

Three. **To prescribe rules for their own government** and for the government of the university.

Four. **To adopt and prescribe rules for the government and discipline** of the cadets.

Five. **To receive, in the name of the state, or of the board of regents,** as the case may be, all property donated to the university.

Six. **To choose a president of the university, the professors, and other officers** and employees of the university, prescribe their duties, fix and provide for the payment of their salaries.

Seven. **To fix the qualification for admission to the benefits** of the university.

Eight. **To fix the admission fee and rates of tuition.**

of the University to Board membership, *ex officio*) were again amended, 1909 (*Statutes and Amendments to the Codes*, 1909, p. 984). This latter amendment added the President of the Alumni Association of the University of California to the *ex officio* membership of the Board, thus establishing the Board as at present constituted.

Nine. To appoint a secretary and treasurer, prescribe their duties, and fix and provide for the payment of their compensation.

Ten. To remove, at pleasure, any officer, professor, or employee of the university.

Eleven. To supervise the general courses of instruction, and, on the recommendation of the several faculties, prescribe the authorities and textbooks to be used in the several colleges.

Twelve. To confer such degrees, and grant such diplomas, as are usual in universities, or as they deem appropriate.

Thirteen. To establish and maintain a museum.

Fourteen. To establish and maintain a library.

Fifteen. To take immediate measures for the permanent improvement and planting of the university grounds.

Sixteen. To keep a record of all their proceedings.

Seventeen. Through the president of the university, to report to the governor the progress, condition, and wants of each of the colleges embraced in the university, the course of study in each, the number of professors and students, the amount of receipts and disbursements, together with the nature, cost, and results of all important investigations and experiments, and such other information as they may deem important. [Amendment approved 1874; Code Amdts. 1873-74, p. 33.]

SECTION 1433. Income arising from endowment at disposition of regents. The entire income arising from the endowment is subject to the trusts at the disposition of the board of regents for the support of the university.

SECTION 1434. Fund to be set apart for current expenses. For the current expenditures of the university specific sums of money must be set aside, out of the funds at their disposal, by the board of regents, which are subject to the warrants of the president of the board, drawn upon the treasurer of the university in pursuance of the orders of the board of regents.

SECTION 1435. Funds may be drawn from state treasury. All moneys which may at any time be in the state treasury, subject to the use of the board of regents, may be drawn therefrom by the president of the board, upon the order of the board, in favor of the treasurer of the university. [Amendment approved 1874; Code Amdts. 1873-74, p. 35.]

SECTION 1436. Construction of buildings. The regents must cause to be constructed such buildings as are needed for the use of the university.

SECTION 1437. Same. The plan adopted in the construction of buildings must provide separate buildings for separate uses, and so group all such buildings that a central building may bring the whole in harmony as part of one design.

SECTION 1438. **Same.** The construction and furnishing of the buildings must be let out to the lowest responsible bidder, after advertisement for not less than ten days in at least two daily newspapers published in the city of San Francisco; but the regents may reject any bid, and advertise anew.

SECTION 1439. **Temporary buildings.** Until the university buildings are ready for use the regents may make temporary arrangements for buildings at Oakland.

ARTICLE IV

SECRETARY OF THE BOARD OF REGENTS

SECTION 1449. **Qualifications and choice of secretary.** A practical agriculturist, competent to superintend the working of the agricultural farm and to discharge the duties of secretary of the board of regents, must be chosen by the board as their secretary.

SECTION 1450. **Residence and duties of secretary.** The secretary must:

1. **Reside and keep his office** at the seat of the university;
2. **Keep a record of the transactions of the board of regents**, which must be open at all times to the inspection of any citizen of this state;
3. **Have the custody of all books, papers, documents, and other property** which may be deposited in his office;
4. **Keep and file all reports and communications** which may be made to the university appertaining to education, science, art, husbandry, mechanics, or mining;
5. **Address circulars to societies and others, soliciting information** upon the latest and best modes of culture of the products adapted to the soil and climate of the state, and on all subjects connected with field-culture, horticulture, stock-raising, and the dairy;
6. **Correspond with established schools of mining and metallurgy** in Europe, and obtain information respecting the improvements of mining machinery adapted to California;
7. **Correspond with the patent-office at Washington, and with the representatives of the government** of the United States abroad, to procure contributions to agriculture from these sources; receive and distribute seeds, plants, shrubbery, and trees adapted to our climate and soils, for the purposes of experiment;
8. **Obtain contributions to the museum and the library** of the university;
9. **Keep a correct account of all the executive acts** of the president of the university;
10. **Keep an accurate account of all moneys received** into the treasury or paid therefrom;

11. **Distribute the seeds, plants, trees, and shrubbery received by him**, and not needed by the university, equally throughout the state, to farmers and others who will agree to cultivate them properly and return to the secretary's office a reasonable proportion of the products thereof, with a statement of the mode of cultivation, and such other information as may be necessary to ascertain their value for cultivation in the state;

12. **Publish from time to time in the newspapers of the state, free of charge**, information relating to agriculture, the mechanic arts, mining and metallurgy.

SECTION 1451. Term and compensation. The secretary holds office at the pleasure of and receives the compensation fixed by the board.

ARTICLE V

ACADEMIC SENATE OF THE UNIVERSITY

SECTION 1461. Academic senate. The academic senate is composed of the faculties and instructors of the university.

SECTION 1462. General powers of. The senate must conduct the general administration of the university, regulate the general and special course of instruction, receive and determine all appeals from acts of discipline enforced by the faculty of any college, and exercise such other powers as the board of regents may confer upon it.

SECTION 1463. Proceedings of. Its proceedings must be conducted according to rules of order adopted by it, and every person engaged in instruction in the university may participate in its discussions; but the right of voting is confined to the president and the professors.

ARTICLE VI

UNIVERSITY CADETS

SECTION 1473. University cadets. The students of the university must be organized into a body known as the "University Cadets."

SECTION 1474. Officers of. The officers of cadets, between and including the ranks of second lieutenant and colonel, must be selected by the chief military instructor, with the assent of the president of the university, and must be commissioned by the governor. [Amendment approved 1874; Code Amdts. 1873-74, p. 35.]

SECTION 1475. Equipment of. The adjutant-general of the state must issue such arms, munitions, accouterments, and equipment to the university cadets as the board of regents may require and the governor approve. [Amendment approved 1874; Code Amdts. 1873-74, p. 35.]

SECTION 1476. Retired officers of. Upon graduating or retiring from the university, such officers may resign their commissions or hold the same as retired officers of the university cadets, liable to be called into service by the governor in case of war, invasion, insurrection, or rebellion.

SECTION 1477. Report of military instructor. The military instructor must make quarterly reports to the adjutant-general of the state, showing the number, discipline, and equipments of the cadets.

JUDICIAL DECISIONS

Admission of Women to Hastings College of Law. Acceptance of the Hastings donation of \$100,000 (Acts of 1878, p. 533) to establish in the University of California the Hastings College of Law, affiliates the two; and a student can not be rejected from the college on the sole ground that she is a female. *Foltz v. Hoge*, 54 Cal. 28 (1879).

Disbursement of University Funds. Funds deposited by the regents of the University of California in the state treasury may be drawn therefrom in the manner provided by statute, namely, on a resolution of the said regents, endorsed by the governor of the state; and Article 4, Section 22 of the California constitution, providing how money may be drawn from the treasury in other cases, does not apply to such funds, and the warrant of the comptroller is therefore not an essential prerequisite to the disbursement of such funds by the treasurer. *Regents v. January*, 66 Cal. 507, 6 Pac. 376 (1885). *Same v. Dunn*, 6 Pac. 377 (1885).

Constitutional Independence of the University. Article 9, Section 9 of the Constitution of 1879, declared that the University of California should be continued in the form and character prescribed in the acts then in force, subject to legislative control for certain specified purposes only. The act of March 26, 1878, affiliated Hastings College of Law with the university. The acts of March 3, 1883, and March 18, 1885, assuming to transfer the control of the college to directors selected in a manner different from that previously existing, were unconstitutional. *People v. Kewen*, 69 Cal. 215, 10 P. 393 (1886).

Personal Liability of Regents. Regents of the University of California, who constitute a corporation and were expressly

declared by statute not to be deemed public officers, can not be held individually liable for damages on account of a telegraph or telephone line negligently maintained by the corporation. *Lundy v. Delmas*, 104 Cal. 655, 38 Pac. 445, 26 L.R.A. 651 (1894).

Power to Receive Bequests. Under Section 1275 of the Civil Code, providing that corporations organized for scientific, literary, or educational purposes may take testamentary dispositions of property, the state university can take a testament or gift though not specially authorized to receive it. *In re Royer's Estate*, 56 P. 461, 123 Cal. 614, 44 L.R.A. 364 (1899).

Tax Exemption: Local Assessments. The general exemption from taxation of the property of the University of California does not extend to street improvement assessments upon vacant property not devoted by the University to any public use. *City Street Improvement Company v. Regents of University*, 153 Cal. 776, 96 Pac. 801, 18 L.R.A.N.S. 451 (1908).

Tax Exemption: Local Assessments. When a contractor who had performed street improvement work adjacent to the 13½ acre site of the Affiliated Colleges of the University of California in the city of San Francisco sought to foreclose a lien on one-seventh of the area, consisting of the Fourth Avenue frontage to a depth of 120 feet, the foreclosure was not permitted. Although there were no university buildings on the strip of land in question, it was held to be an inseparable part of the site on which the buildings were located, such that it could not be severed and sold without impairing the value of the remainder of the block to the university for its public purposes. Hence it was not within the rule of the preceding case, and not subject to assessment. *Raisch v. Regents of University of California*, 37 Cal. App. 697, 174 Pac. 943 (1918).

Police Power of the Regents. Article 9, Section 9, of the Constitution of 1879 elevated the university "to the place and dignity of a constitutional department of the body politic", independent of legislative interference except when the rules of the regents conflict with a positive exercise of the plenary police power of the state. Hence the regents have power to make reasonable regulations to promote the health of students, and were justified in making and enforcing a compulsory

vaccination rule, and in excluding students who refused to comply with it. *Williams v. Wheeler*, 23 Cal. App. 619, 138 Pac. 937 (1913). This rule prevails regardless of a statute of 1921 which forbade the making of health regulations by local school authorities, because such statute is a negative and not a positive exercise of the police power of the state. *Wallace v. Regents*, 242 Pac. 892, 75 Cal. App. 274 (1925).

Disposition of Property Received by a Conditional Deed. Delay in carrying out the provision of a deed given to the regents, requiring the lands deeded to be used for forestry investigation and research, was not sufficient to be adjudged unreasonable so as to work a forfeiture. *Whitaker v. Regents*, 178 P. 308, 39 Cal. App. 111 (1918).

Legality of Non-Resident Tuition Fee. Section 1394½ of the Political Code, and rules of the regents of the university thereunder, requiring students at the university to pay a tuition fee if they have not been *bona fide* residents of the state at least one year, is a reasonable classification of citizens, and not unconstitutional. *Bryan v. Regents of the University of California*, 205 P. 1071, 188 Cal. 559 (1922).

Liability for Tort of Infirmary Physician. The operation of the university infirmary by the regents is a strictly governmental activity, even though fees are charged and profits made, and the university is not liable in damages for injuries to a student caused by the negligence of a physician employed in the infirmary. The physician is individually liable. *Davie v. Board of Regents*, 66 Cal. App. 693, 227 Pac. 243 (1924). *Same*, 227 Pac. 247 (1924).

Constitutionality of Special Aid to War Veteran University Students. The constitutional prohibition of gifts of public funds is not violated by providing free textbooks and transportation for veterans of the World War attending the state university; nor by the furnishing of sustenance to such veterans while they are in attendance. The promotion of patriotism is a proper exercise of governmental functions and a proper field for the expenditure of public money. The Veterans' Education Act of 1921 is constitutional. *Veterans Welfare Board v. Riley, Comptroller*, 189 Cal. 159, 208 Pac. 678, 22 A.L.R. 1531 (1922).

CARNEGIE INSTITUTE OF TECHNOLOGY

PITTSBURGH, PENNSYLVANIA

A privately controlled non-sectarian technological institution open to men and women. Founded by Andrew Carnegie in 1900, by a gift to the city of Pittsburgh of funds to establish a technical school. Opened in 1905. Known as the Carnegie Technical Schools until 1912, when the name was changed to the Carnegie Institute of Technology. It is the corporate offspring of the Carnegie Institute, which is also the parent organization of the Carnegie Library of Pittsburgh, the Museum, the Department of Fine Arts, and the Carnegie Music Hall. The Carnegie Institute of Technology comprises four colleges: Margaret Morrison Carnegie College for Women; College of Fine Arts (co-educational); College of Engineering (men only); College of Industries (men only); and the Carnegie Library School (co-educational). In the Division of General Studies, instruction is given in non-technical subjects. In 1930 the endowment was \$15,400,000, and the annual expenditures, \$1,200,000.

CHARTER OF THE CARNEGIE INSTITUTE OF TECHNOLOGY¹

In the
COURT OF COMMON PLEAS
of Allegheny County, Pennsylvania

In Re Application for Charter of Carnegie Institute of Technology of Pittsburgh, Pennsylvania.	} No. 2319 April Term, 1912
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To the Honorable, the Judges of Said Court:

In compliance with the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled, "An Act to provide for the incorporation and regulation of certain corporations", approved the 29th of April, 1874, and the several supplements thereto, the undersigned, being a majority of the trustees hereinafter named, respectfully represent:

1. That pursuant to an instrument in writing dated November 15th, 1900, a true and correct copy whereof is hereto attached and made part hereof, marked "Exhibit A", to which reference is made for the terms, provisions and conditions of the trust thereby created, Andrew Carnegie has made gifts of large sums of money and in connection therewith has created a trust for the benefit of the people of the City of Pittsburgh, Pennsylvania, for the purpose of establishing and maintaining a technical institute, the terms, conditions and scope of said trust being prescribed, and the manner of selecting or appointing the trustees being specified, and said trust providing that officers or representatives of the City of Pittsburgh shall be some of the trustees thereof.

2. That the City of Pittsburgh, Pennsylvania, duly accepted the gift aforesaid upon the terms imposed, and provided suitable real estate as a site for said schools, all as will more fully and at length appear by reference to Resolution of the Councils of said City, dated January 28, 1901, and Ordinance No. 135, dated September 14, 1903, recorded in Ordinance Book, Vol. 15, page 307, true and correct copies whereof are hereunto annexed and made part hereof, marked respectively "Exhibit B-1" and "Exhibit B-2".

¹Being an order of the Court of Common Pleas of Allegheny County, Pennsylvania, filed March 16, 1912.

3. That the trustees named in said written instrument (Exhibit A) duly accepted said trust and they and their successors are now administering the same. That the present trustees, who are hereinafter particularly named, a majority of whom are citizens of the State of Pennsylvania, desire that they may be incorporated and that a charter may be issued to them and their successors according to law, for the management of said trust.

4. That by resolution of its Council, dated _____ 1912, a true and correct copy whereof is hereunto annexed and made part hereof, marked "Exhibit C", the said City of Pittsburgh has consented to the incorporation of said trustees, and authorized and directed its representatives among said trustees to join in this petition.

5. That in compliance with the Act of the General Assembly of the Commonwealth of Pennsylvania, approved April 26th, 1911, (said Act being a supplement to the Act of April 29th, 1874, above referred to), your petitioners file the following Articles of Association and certify:

First. The name of the proposed corporation is Carnegie Institute of Technology of Pittsburgh, Pennsylvania.

Second. The purpose for which the corporation is formed is to administer the trust created by Andrew Carnegie for the benefit of the people of the City of Pittsburgh, Pennsylvania, in establishing and maintaining a technical institute in said City, as hereinbefore more fully set forth.

Third. The corporation shall have power to confer the degrees in course, and honorary degrees, viz.: Bachelor, Master, Doctor and Professional Degrees, in pure and applied science and the arts.

Fourth. The amount of assets in the possession of the subscribers and their associates devoted to the establishing and conducting of those branches of education in which the corporation shall have power to confer degrees is as follows:

In Endowments	\$4,000,000
In Buildings	2,500,000
In Building Fund	1,500,000
In Real Estate	350,000
	<u>\$8,350,000</u>

Fifth. The minimum number of persons whom it is intended to regularly employ as members of the Faculty in each branch of education in which the corporation shall have power to confer degrees is Six.

Sixth. The requirements for admission and the course of study to be pursued in each branch of education in which the corporation shall have power to confer degrees are:

For admission—High School graduation or its equivalent.

Courses of Study—In each branch of education there will be required of the students a course of study of four years or its equivalent.

Seventh. The place where the business of the corporation is to be transacted is Pittsburgh, Pennsylvania.

Eighth. The corporation is to have perpetual existence.

Ninth. The trustees of the Carnegie Institute of the City of Pittsburgh, as said Board of Trustees shall from time to time be constituted, shall be the trustees of this corporation and the names and residence of the present trustees are as follows:

Dr. John A. Brashear	Pittsburgh, Pennsylvania
Rev. A. A. Lambing	" "
Dr. S. H. Church	" "
Mr. George E. Shaw	" "
Mr. William McConway . . .	" "
Hon. Josiah Cohen	" "
Hon. John D. Shafer	" "
Hon. James R. Macfarlane . .	" "
Mr. E. M. Bigelow	" "
Mr. George H. Clapp	" "
Mr. A. Bryan Wall	" "
Mr. W. L. Scaife	" "
Hon. George T. Oliver	" "
Mr. Howard Heinz	" "
Mr. M. B. Leisser	" "
Hon. Henry K. Porter	" "
Hon. Jos. Buffington	" "
Hon. J. H. Reed	" "
Mr. George A. Macbeth . . .	" "
Mr. A. C. Dinkey	" "
Dr. W. N. Frew	" "
Mr. A. W. Mellon	" "
Mr. C. L. Taylor	" "
Mr. J. F. Hudson	" "
Mr. Taylor Allderdice	" "
Hon. Wm. A. Magee	" "
Mr. J. M. Goehring	" "
Mr. W. A. Hoeveler	" "
Dr. J. P. Kerr	" "
Dr. S. S. Woodburn	" "
Mr. W. G. Wilkins	" "
Mr. Robert Garland	" "
Mr. Enoch Rauh	" "
Dr. David B. Oliver	" "
Mr. R. A. Franks	Hoboken, New Jersey

For the manner in which the successors to the above-named trustees are chosen and qualified, reference is made to the following Exhibits attached hereto and made part hereof, to wit:

Note: "Exhibits D-1, D-2, and D-3" are omitted from this compilation. "Exhibit D-1" is an ordinance of the City of Pittsburgh enacted February 24, 1890, accepting Andrew Carnegie's gift of the Free Library. Under this ordinance the Board of Trustees of the Carnegie Free Library consisted of the Mayor of the city, the Presidents of the Select and Common Councils, the President of the Central Board of Education, a Library Committee of five members appointed by the Presidents of the Councils, two of whom shall be members of the Select Council and three of the Common Council, and "twelve well-known citizens of Allegheny County appointed by Andrew Carnegie." Another ordinance of May 26, 1890, reduced, at the suggestion of Mr. Carnegie, the number of his representatives on the board to nine, thus making the total number of members eighteen—nine representing the city and nine representing the donor. All vacancies occurring in the board other than those caused by changes of public officials are filled by the majority of the remaining members of the board who are not public officials.

"Exhibit D-2" is a copy of the Deed of Trust creating the Carnegie Institute of the City of Pittsburgh, dated March 2, 1896 (at that time the corporation was entitled "the Trustees of the Carnegie Fine Arts and Museum Collection Fund", but on April 20, 1898 the title was changed to "the Board of Trustees of the Carnegie Institute"). This consists of all the members of the Board of Trustees of the Carnegie Free Library, as that board may from time to time be composed, and in addition, eighteen other members appointed by Andrew Carnegie and having power to choose their own successors.

"Exhibit D-3" is a decree of the Court of Common Pleas of Allegheny County at the April Term, 1912 (No. 79, February 10, 1912) designating, in view of the change in form of the city government, what city officers shall be *ex officio* trustees of the Carnegie Institute. The officers designated are the Mayor, the President of Council, the members of the Library Committee of Council, not exceeding six in number, and the President of the Board of Public Education of the City of Pittsburgh.

Tenth. The officers of the City of Pittsburgh, and the names of those filling the offices at the present time, who are *ex officio* trustees of this corporation, and the manner of their selection or appointment by the proper body of the city government, are as follows:

The Mayor—William A. Magee—elected by the qualified voters of the City.

President of Council—J. M. Goehring—elected by Council from among its own members who are elected by the qualified voters of the City.

Members of the Library Committee of Council, not exceeding six in number—W. A. Hoeveler, J. P. Kerr, S. S. Woodburn, W. G. Wilkins, Robert Garland, Enoch Rauh—elected by the qualified voters of the City and appointed to the Library Committee by the President of Council.

President of the Board of Public Education—David B. Oliver, elected by the Board of Public Education from among its own members, who are appointed by the Judges of the Court of Common Pleas of Allegheny County.

6. This corporation has no capital stock.

7. The yearly income of this corporation, other than that derived from real estate, shall not exceed \$2,500,000.00.

WITNESS our hands and seals this 15th day of March, A. D., One Thousand Nine Hundred and Twelve (1912).

W. N. Frew (Seal)	William A. Magee (Seal)
John D. Shafer (Seal)	Chas. L. Taylor (Seal)
S. H. Church (Seal)	R. A. Franks (Seal)
Wm. McConway (Seal)	W. Lucien Scaife (Seal)
Robert Garland (Seal)	Jno. A. Brashear (Seal)
Josiah Cohen (Seal)	Geo. H. Clapp (Seal)
A. A. Lambing (Seal)	Enoch Rauh (Seal)
Jos. Buffington (Seal)	S. S. Woodburn (Seal)
A. W. Mellon (Seal)	W. A. Hoeveler (Seal)
J. P. Kerr (Seal)	J. M. Goehring (Seal)
James F. Hudson (Seal)	Taylor Allderdice (Seal)
W. G. Wilkins (Seal)	Edw. M. Bigelow (Seal)
Geo. A. Macbeth (Seal)	George T. Oliver (Seal)
George F. Shaw (Seal) (Seal)
A. C. Dinkey (Seal) (Seal)
Howard Heinz (Seal) (Seal)
M. B. Leisser (Seal) (Seal)

State of Pennsylvania, }
County of Allegheny. } ss:

Before me, a Notary Public, in and for said County and State, personally came Wm. McConway, W. Lucien Scaife and George E. Shaw above-named, who, in due form of law, acknowledged the foregoing instrument to be their act and deed for the purposes therein specified.

Witness my hand and seal of office this 15th day of March A. D., 1912.

L. H. DIERKEN, *Notary Public*.

My commission expires, Feb. 21, 1915.

N. P. Seal

EXHIBIT A

Letter from Andrew Carnegie

"Pittsburgh, Pa.,
November 15, 1900.

"Hon. Wm. J. Diehl,
Mayor, City of Pittsburgh,

"Honored Sir:—

I learn with deep interest that the Central Board of Education has asked the City of Pittsburgh for \$100,000 to begin a Technical School, no doubt to obtain for the bright youth of the High School the essential advantages which technical education in our day affords.

"For many years I have nursed the pleasing thought that I might be the fortunate giver of a Technical Institute to our City fashioned upon the best models, for I know of no institution which Pittsburgh, as an industrial center, so much needs. I postponed moving in the matter because I wished the Carnegie Institute to be fairly launched upon its new development before drawing the attention of Pittsburgh to the Technical Institute. The action of the Educational Board, however, impels me to step forward now and ask that I may be allowed to do what I have long wished to do for Pittsburgh.

"I have given much attention to Technical Schools both in the United States and Great Britain during the past few years. The work now being done by the Technical Institute in Boston and Worcester, The Drexel Institute in Philadelphia, the Pratt Institute in Brooklyn, the Armour Institute in Chicago, is most encouraging.

"In Great Britain the Keithley Institute and the Halifax Institute, which I visited in September last to distribute the prizes to the students, gave me quite a surprise, nearly one-half of the 1,100 students in the former, and fully one-half of the 1,400 in the latter were young men and women, workers during the day, improving themselves in various studies pertaining to their crafts in the evening classes of these institutions. I told these students that this impressed me more than any other. I recalled an essay written by my grandfather to Cobbets Register, which that great man pronounced the most valuable communication ever published in the Register. It was entitled 'Handication versus Headication'; in that article my grandfather thanked God that in his youth he had learned to make and mend shoes.

"It is really astonishing how many of the world's foremost men have begun as manual laborers. The greatest of all, Shakespeare, was a wool-carder; Burns, a plowman; Columbus, a sailor; Hannibal, a blacksmith; Lincoln, a railsplitter; Grant, a tanner. I know of no better foundation from which to ascend than manual labor in youth.

"We have two notable examples of this in our own community whose fame is world wide: George Westinghouse was a mechanic; Prof. Brashear, a mill-wright.

"I believe that a first class technical school probably as large as that of Worcester, would develop latent talent around us to such extent as to surprise the most sanguine.

"If the City of Pittsburgh will furnish a site, which I hope will be of ample size for future extensions, I shall be delighted to provide the money for such a school, taking care to provide room for additions to the buildings to meet the certain growth of Pittsburgh.

"I would endow it with \$1,000,000 five per cent gold bonds, yielding a revenue of \$50,000 per year.

"The rare ability with which the Trustees of the Carnegie Institute have managed it, and the results which have so surprised and gratified me, naturally lead me to beg these gentlemen to take charge of the Technical Institute and its endowment. I had only to plead that their increased labors were for the good of Pittsburgh, to be assured by everyone, that I have so far had an opportunity of consulting, that they would gladly assume the enlarged responsibility.

"I propose, therefore, Mr. Mayor, to include the Technical School with the Institute and have therefore made its endowment equal to the latter.

"There are many questions to decide, involving investigation, careful study and much labor; among these, whether fees should be charged as at the Armour, Drexel, Worcester and Boston Institutes and in fact I might say all the technical schools, or whether we can take a new departure and arrange that the students of the high school, for instance, should have the doors of the Technical School open to them free. This and many other questions must be left to the Commission. But I am in a position to assure you that the Commission is prepared to face the problem, and that my heart is in the work."

Very respectfully yours,

"ANDREW CARNEGIE."

EXHIBIT B-1

Copy of Resolution duly adopted by the Councils of the City of Pittsburgh at a meeting held January 28th, 1901.

"Resolved that the City of Pittsburgh does hereby tender to Mr. Carnegie the thanks of this municipality for his generosity and his continued substantial interest in the progress and welfare of this community and does also assure him that this City will gladly meet, consult and cooperate with him concerning every detail necessary to a most speedy completion of this school.

"Resolved further, That the said communication of Mr. Carnegie be spread in full and at length upon the minutes of the Councils of this City."

The communication referred to in the foregoing resolution is the letter dated November 15th, 1900, written by Mr. Carnegie to Mayor Wm. J. Diehl and known in this proceeding as "Exhibit A."

EXHIBIT B-2

Being copy of Ordinance No. 135 of the City of Pittsburgh dated September 14, 1903, recorded in Ordinance Book, Vol. 15, page 307.

"An Ordinance authorizing and empowering the Board of Trustees of the Carnegie Institute, and their successors, to enter upon, use, occupy and hold certain land and real estate in the 22nd Ward, Pittsburgh, for the purposes of establishing and maintaining thereon technological schools and to erect buildings thereon for said purposes:

"SECTION 1. Be it ordained and enacted by the City of Pittsburgh in Select and Common Councils assembled, and it is hereby ordained and enacted by the authority of the same, That the Board of Trustees of the Carnegie Institute and their successors be and they are hereby authorized and empowered to enter upon, use, occupy and hold so much of the land and real estate hereinafter described as they may from time to time find necessary for the purposes of establishing and maintaining thereon a technological school or technological schools, and said Boards and their successors are hereby authorized and empowered to erect thereon such building or buildings as they may from time to time find desirable or necessary for the purposes above mentioned, the real estate referred to being—

"All that certain tract or piece of ground situated in the 22nd Ward of the City of Pittsburgh, known as the 'Magee-Flinn' or 'Woodlawn Avenue site' and bounded and described as follows, to wit:

"Beginning at a point on the east line of Boundry Street as located and shown upon the City District Plan, approved by Court on the 17th day of July, 1843, at a width of 80 feet; thence along the said line N. 30° 45' E. 643.43 feet to the southern line of property of Honorable Christopher Magee; thence along the same S. 74° 45' E., 1,107 feet to a post; thence still further along the last mentioned property N. 17° 35' E., 252.22 feet to the south line of property of John R. McGinley; thence along the same S. 39° 09' E. 267.65 feet to a point on the line between the land of said John R. McGinley and land hereby conveyed; thence by the said property of John R. McGinley and that of Andrew W. Mellon S. 86° 24' 30'' E., 436.05 feet to a point; and thence by the said property of Andrew W. Mellon N. 22° 37' E., 112 feet to a point; thence No. 81° 50' E., 191.90 feet to the western line of land of Morris; thence by the same S. 11° 30' E., 555.68 feet to the northern line of Woodlawn Avenue, formerly Fralich Street; thence along the said line, S. 63° 36' W. 163.25 feet to the eastern line of the property of Clara C. Anderson; thence along the said line North 20° 13' 51'' W., 150.86 feet to a point; thence S. 85° 39' 15'' W., along the property hereby conveyed a distance of 60 feet to a point; thence S. 29° 03' 58'' W., and along the same a distance of 155.04 feet to the northern line of Joncaire Street; thence along the said line N. 72° 17' 30'' W., 536.12 feet to a point; thence S. 21° 29' 30'' W., crossing Joncaire Street and along property hereby conveyed and property formerly of Hock, a distance of 486.24 feet to the northern line of Woodlawn Avenue; thence along the said line N. 72° 06' 30'' W., 1,427 feet, more or less to the eastern line of Joncaire Street; thence along the said line southwardly a distance of 53 feet, more or less, to the northern line of Schenley Park; thence along the said line N. 73° 06' 30'' W., a distance of 140 feet, more or less, to the place of beginning.

"SECTION 2. This ordinance shall not take effect until said trustees shall have filed with the City of Pittsburgh a statement or stipulation acceptable to the Mayor and councils of said City setting forth generally the nature and character of the institution that is to use and occupy said premises and setting forth particularly in what manner and how the said City of Pittsburgh shall have a voice in the management of said institution which paper shall be recorded by the City Clerk in the Ordinance Book in his office.

"SECTION 3. That any ordinance or part of ordinance conflicting with the provisions of this ordinance be and the same is hereby repealed, so far as the same affects this ordinance.

"Ordained and enacted into a law in Councils this 14th day of September, A. D., 1903.

Attest:

E. W. HASLER,
Clerk of Select Council

JOHN S. LAMBIE,
President of Select Council

Attest:

H. B. DAVIS,
Clerk of Common Council

C. S. CRAWFORD,
President of Common Council

Attest:

WALTER R. BLACK,
Mayor's Secretary

Mayor's Office, Sept. 15, 1903

Approved:

W. B. HAYES,
Mayor."

The "Statement or stipulation" referred to in Section 2 of the foregoing ordinance was accepted by Councils Sept. 14, 1903, and approved by the Mayor Sept. 16, 1903, and is recorded in the Clerk's Office, in Ordinance Book, Vol. 15, page 313, under date of Sept. 21, 1903.

EXHIBIT C

Being copy of the Resolution of Councils consenting to Incorporation.

Whereas the Board of Trustees of the Carnegie Institute are about to apply to the Court of Common Pleas of Allegheny County under the provisions of the Act of Assembly of April 26th, 1911, for a charter of Incorporation for the management of the trust held by them for the maintenance of a Technical Institute.

"*Resolved*, That the consent of the City of Pittsburgh be and such consent hereby is given to such incorporation, and the officers or representatives of the City on said Board of Trustees are hereby authorized and directed to join with other members of said Board in a proper petition for such incorporation."

ORDER

And now, to wit, this 15th day of April A. D., 1912, the foregoing Certificate of Incorporation of the Carnegie Institute of Technology having been presented to me, a Law Judge of the Court of Common Pleas of Allegheny County, Pennsylvania, accompanied by proof of publication of notice of this applica-

tion, as required by law and Rules of Court, I hereby certify that I have perused and examined the said Certificate and have found the same to be in proper form and within the purposes named in the first class of corporations specified in Section 2 of the Act of April 29th, 1874, and the supplements thereto, and said Certificate and Articles of Association appearing to be lawful and not injurious to the community, on motion of Reed, Smith, Shaw & Beal, attorneys for the petitioners, I do hereby approve of the said Certificate of Incorporation and order and direct the prothonotary of this court to transmit to the Superintendent of Public Instruction of the Commonwealth of Pennsylvania, a certified copy of said Certificate of Incorporation, with this order endorsed thereon for further proceedings in conformity with the Supplement to the Act of April 29th, 1874, approved April 26th, 1911.

THOS. D. CARNAHAN,
Judge.

And now, to wit, this 17th day of April, 1912, the application of the Carnegie Institute of Technology of Pittsburgh, Pa., having been presented to the College and University Council of Pennsylvania, and having been duly considered, the said College and University Council finds that the amount of assets, the courses of instruction and the composition of the faculty for each of the proposed courses in pure and applied science and the arts, are satisfactory; and that if the standard of admission to the proposed four year courses is interpreted to mean a standard four year high school course or its full equivalent, the standard of admission is likewise sufficient to justify the exercise of the power and privilege to confer degrees. The Council further finds that with this proviso as to standards of admission the educational needs of the Commonwealth are likely to be met and greatly benefitted by the granting of said application. The College and University Council therefore approves the petition, and respectfully recommends to the Court of Common Pleas of Allegheny County to make a final decree, granting the request of the Carnegie Institute of Technology for the right to grant the degrees named in its petition.

JAMES D. MOFFAT,
*Vice President College and
University Council.*

Attest:

NATHAN C. SCHAEFFER,
Secretary.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PA.

In Re Application
For Charter
Carnegie Institute of Technology
of Pittsburgh, Pennsylvania.

No. 2319, April
Term, 1912.
Docket C.

FINAL DECREE

And now, to wit, April 20th, 1912, it appearing to the court that a certified copy of the Certificate of Incorporation was duly forwarded to the Superintendent of Public Instruction and the application for charter heard and considered by the University Council, and that said certified copy of the Certificate of Incorporation has been duly returned to the court, with the endorsement thereon of the findings of said University Council, its approval of said certificate, and its recommendation that the application of the petitioners be granted, NOW, THEREFORE, after giving consideration to the findings of said Council and guided by its recommendation, the court is satisfied with the propriety of said application, in view of all the facts, and approves the same, and it is now ordered and decreed that upon the recording of said certificate, with the recommendation of said Council, and a copy of this order, in the office of the Recorder of Deeds, etc., of Allegheny County, Pa., the subscribers thereto and their associates and successors shall be a corporation, for the purpose and upon the terms therein stated, and henceforth the persons named therein and subscribing the same, and their associates and successors, shall be a corporation by the name therein given, with power to confer degrees in accordance with the recommendation of said University Council.

By the Court.

THOS. D. CARNAHAN,
Judge.

Commonwealth of Pennsylvania, }
Allegheny County. } ss:

I, John A. Fairman, Recorder of Deeds, etc., in and for said County, do hereby certify that the foregoing is a full and correct copy of Charter as the same is recorded in the Recorder's office in and for said County on 20th day of April A. D., 1912, in Charter Book, Vol. 47, Page 119.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said office the 5th day of July A. D., 1912.

(Seal) JOHN A. FAIRMAN,
Recorder.

CATHOLIC UNIVERSITY OF
AMERICA

WASHINGTON, D. C.

A university for men, and in the graduate field, for women, controlled by the Hierarchy of the Catholic Church in the United States. Incorporated under Laws of the District of Columbia in 1887. Chartered by Pope Leo XIII in 1889. Now consists of the School of Theology; the School of Law; the School of Canon Law; the School of Engineering; the College of Arts and Sciences, and the Graduate School of Arts and Sciences. In 1930 the endowment was \$3,000,000, and the annual expenditures about \$1,000,000.

LAWS RELATING TO THE CATHOLIC UNIVERSITY OF AMERICA¹

FEDERAL STATUTES

ABSTRACT OF REVISED STATUTES RELATING TO THE DISTRICT OF COLUMBIA

INSTITUTIONS OF LEARNING

SECTION 574. Certificate of Organization. Any five or more persons desirous of associating themselves for the purpose of establishing an institution of learning, may make, sign, and acknowledge, before any officer authorized to take acknowledgment of deeds in the District, and file in the office of the recorder of deeds, a certificate in writing, to be recorded in a book kept for that purpose and open to public inspection, in which shall be stated:

1st. The name or title by which the institution shall be known in law;

2d. The number of trustees, directors, or managers, and their names;

3d. The particular branch of literature and science, or either of them proposed to be taught; and

4th. If the institution is to be of the rank of a college or university, the number and designation of the professorships to be established.

SECTION 575. Signers Incorporated. Upon filing such certificate the persons signing and acknowledging the same and their successors and associates shall be a body politic and corporate, by the name and style stated in the certificate, and by that name and style shall have perpetual succession, with power to sue and be sued, plead and be impleaded; to acquire, hold, and convey property in all lawful ways; to have and use a common seal, and to alter and change the same at pleasure; to make and alter, from time to time, such by-laws not inconsistent with the Constitution of the United States or the laws in force in the District as they may deem necessary for the government of the institution, and to confer upon such persons as may be considered worthy such academical or honorary degrees as are usually conferred by similar institutions.

¹Taken from the "By-Laws of the Board of Trustees of the Catholic University of America," published by the University in 1931.

SECTION 576. Corporate Powers. Such corporation shall be competent in law and equity to take to themselves, in their corporate name, real, personal, or mixed property by gift, grant, bargain and sale, conveyance, will, devise, or bequest of any person whomsoever, and to grant, bargain, sell, convey, devise, let, place out at interest or otherwise dispose of the same for the use of the institution, in such manner as shall seem most beneficial thereto.

SECTION 577. Property Held, for What Purposes. Such corporation shall hold the property of the institution solely for the purposes of education, and not for the individual benefit of themselves or of any contributor to the endowment thereof.

SECTION 578. Funds, How Applied. The trustees, directors, or managers of any such corporation shall faithfully apply all the funds collected or the proceeds of the property belonging to the institution, according to their best judgment, in erecting or completing suitable buildings, supporting necessary officers, instructors, and servants, and procuring books, maps, charts, globes, and philosophical, chemical and other apparatus necessary to the success of said institution.

SECTION 579. In case any donation, devise, or bequest shall be made for particular purposes, in accordance with the designs of the institution, and the corporation shall except (*sic*) the same, such donation, devise, or bequest shall be applied in conformity with the express condition of the donor or devisor.

SECTION 580. Quantity of land. No such corporation shall hold more land at any one time than necessary for the purposes of education, as set forth in its articles of association, unless it shall have received the same by gift, grant, or devise and in such cases the corporation shall be required to sell or dispose of the same within fifteen years from the time the title thereto is acquired.

SECTION 581. On failure to so dispose of the land, so much of the same over and above the amount necessary to be used as provided in the preceding section shall revert to the original donor, grantor, devisor, or their heirs.

SECTION 582. Officers. Such corporation shall have the power to appoint a president or principal for the institution and such professors or servants as may be necessary, and to displace any of them, as the interests of the institution require; to fill vacancies which may happen by death, resignation, or otherwise among such officers or servants, and to prescribe and direct the course of studies to be pursued in the institution.

SECTION 583. Treasurer. Such corporation may require the treasurer of the institution and all other agents thereof, before entering on the duties of their appointment, to give bond

for the security of the corporation in such sums and with such security as may be deemed sufficient by the corporation.

SECTION 584. Annual Statements. It shall be the duty of the trustees of any institution, or a majority of them, to file, on or before the first Monday in January in each year, in the office of the recorder of deeds, who shall index the same, a statement of the trustees and officers of the institution, with an inventory of its property and liabilities and students, and such other information as will exhibit its condition or operation.

SECTION 585. Suits. All process against any such corporation shall be by summons, and the service of the same shall be by leaving an attested copy thereof with the president, secretary or treasurer, or at the office of the corporation at least sixty days before the return day thereof.

SECTION 586. Quo Warranto. In case any such corporation shall at any time violate or fail to comply with any of the preceding provisions, upon complaint being made to the Supreme Court of the District, a writ of quo warranto shall issue, and the district attorney of the United States shall prosecute, in behalf of the people, for a forfeiture of all rights and privileges secured by this sub-chapter to such corporation.

CERTIFICATE OF INCORPORATION

District of Columbia, }
County of Washington, } *To wit:*

I, Charles S. Drury, a Notary Public in and for the District of Columbia, do hereby certify that James Gibbons, John J. Williams, Patrick John Ryan, Michael A. Corrigan, John Ireland, J. Lancaster Spaulding, John J. Keane, Casper H. Borgess, Martin Marty, John M. Farley, John S. Foley, Placidus L. Chapelle, Thomas S. Lee, Michael Jenkins, Eugene Kelly, Thomas E. Waggaman, and Bernard H. Farren, parties to a certain instrument of writing purporting to be a Certificate of Incorporation of the Catholic University of America, bearing date on the 12th day of November, A. D. 1885, and hereto annexed, personally appeared before me in the District of Columbia aforesaid, all the said persons being personally well known to me to be the persons who executed the said instrument of writing, and acknowledged the same to be their act and deed.

Given under my hand and notarial seal this 19th day of April, A. D., 1887.

(Notarial Seal)

CHARLES S. DRURY,
Notary Public, D. C.

Copy of Certificate of Incorporation

Know all men by these presents, That we, the undersigned citizens of the United States—

1. James Gibbons, of Baltimore City, Maryland;
 2. Patrick John Ryan, of Philadelphia, Pennsylvania;
 3. John Joseph Williams, of Boston, Massachusetts;
 4. Thomas S. Lee, of Baltimore City, Maryland;
 5. Michael A. Corrigan, of New York City, New York;
 6. John Ireland, of St. Paul, Minnesota;
 7. J. Lancaster Spalding, of Peoria, Illinois;
 8. John Joseph Keane, of Richmond, Virginia;
 9. Martin Marty, Yankton, Dakota;
 10. John M. Farley, of New York City, New York;
 11. John S. Foley, of Baltimore City, Maryland;
 12. Placidus L. Chapelle, of Washington, D. C.;
 13. Casper H. Borgess, Detroit, Michigan;
 14. Eugene Kelly, of New York City, New York;
 15. Bernard N. Farren, of 1731 Spring Garden Street, Philadelphia;
 16. Thomas E. Waggaman, of Washington City, D. C.;
 17. Michael Jenkins, of Baltimore City, Maryland—have associated, and do hereby associate ourselves, for the purpose of establishing an institution of learning, in the District of Columbia, of the rank of a University, and in order to become a body corporate under the General Incorporation Act of Congress, enacted for said District of Columbia, we execute these presents, and we do hereby certify as follows:
- 1st. The name by which the said institution of learning or body corporate shall be known in law is “The Catholic University of America.”
- 2d. There shall be seventeen trustees of said institution or body corporate who, for the first year of its existence and until changed or removed by the corporation itself, shall be those persons whose names are hereinbefore set forth.
- 3d. The branches of science and literature proposed to be taught in said institution are the following: 1, Theology; 2, Philosophy; 3, Natural Science; 4, Mathematics; 5, History; 6, Belles-Lettres; 7, Ancient and Modern Languages; 8, Law; 9, Medicine.
- 4th. The professorships to be forthwith established in said institution are the following: 1, Moral Theology; 2, Dogmatic Theology; 3, Sacred Scripture; 4, Ecclesiastical History; 5, Canon Laws; 6, Philosophy; 7, Physical Science, and 8, Literature. And further professorships for the several branches above named it is proposed to establish in course of time. In testimony whereof we, the undersigned, have hereunto set

our hands and affixed our seals on this 12th day of November, in the year of our Lord one thousand eight hundred and eighty-five:

James Gibbons,	(Seal)
M. A. Corrigan,	(Seal)
John J. Keane,	(Seal)
John M. Farley,	(Seal)
Thomas S. Lee,	(Seal)
Thomas E. Waggaman,	(Seal)
John J. Williams,	(Seal)
John Ireland,	(Seal)
Caspar H. Borgess,	(Seal)
John S. Foley,	(Seal)
Michl. Jenkins,	(Seal)
B. N. Farren,	(Seal)
Patrick John Ryan,	(Seal)
J. L. Spalding,	(Seal)
Martin Marty, O. S. B.,	(Seal)
P. L. Chapelle,	(Seal)
Eugene Kelly,	(Seal)

(SEAL)

PUBLIC ACT—NO. 235—70TH CONGRESS²

S. 2310

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the incorporation of the Catholic University of America under chapter 18, Revised Statutes of the United States relating to the District of Columbia, be, and the same is hereby, approved and confirmed.

SECTION 2. That in addition to the rights, duties, and obligations enjoyed and imposed by chapter 18 of the Revised Statutes of the District of Columbia the said university may enter into affiliated agreements with any institutions of learning within or outside of the District of Columbia, for the purpose of giving to students of such institutions the educational facilities of said university, upon such terms as are mutually agreed upon by the said university and the affiliated institutions.

SECTION 3. That said university shall have, and is hereby given, the power to increase the number of its trustees from time to time by a two-thirds vote of the whole number of the trustees at the time such vote is taken to a number not exceeding fifty.

²An Act supplementary to, and amendatory of the incorporation of the Catholic University of America, organized under and by virtue of a certificate of incorporation pursuant to class 1, chapter 18, of the Revised Statutes of the United States relating to the District of Columbia.

In case of the increase of the number of trustees a certificate stating the number of the board and the time when it shall go into effect, and that the action so taken was by a two-thirds vote as required by this Act, shall be filed with the Recorder of Deeds of the District of Columbia.

SECTION 4. The said board of trustees shall have and are hereby given, full power and authority, by a vote of two-thirds of its members, to adopt and change by-laws for the conduct of the business and educational work of said university, to fix the time of meetings, regular and special, and the form of notice to be given; they may appoint an executive committee, composed of trustees, designate the number and chairman thereof, with such powers and authority as are usually exercised by an executive committee, and which shall be conferred by the board subject always to the control of the board of trustees; they may create and establish schools and departments of learning to be connected with and become a part of said university, and establish such scholastic boards and officers as may be required for academic operation and direction in education; they may receive, invest, and administer endowments and gifts of money and property absolute or subject to payments by way of annuities during the life of the donor, for the maintenance of educational work by said university and by any department or chair thereof, now established or which may hereafter be created or established by said university, and they shall have all of the powers and authority heretofore granted to or invested in the trustees of said university by chapter 18 of the Revised Statutes of the United States relating to the District of Columbia.

SECTION 5. That nothing in this Act contained shall be so construed as to prevent Congress from altering, amending, or repealing the same.

Approved, April 3, 1928.

Note: The Board of Trustees of the Catholic University of America now consists of the Cardinals and Archbishops of the Roman Catholic Church in the United States, *ex officio*, and thirty coöpted members, including ten bishops, ten priests, and ten laymen. The maximum total number of members authorized by law is fifty.

UNIVERSITY OF CHICAGO

CHICAGO, ILLINOIS

A privately controlled co-educational university. Established in 1891, with the Colleges of Arts, Literature, and Science, the Graduate Schools of Arts, Literature, and Science, and the Divinity School. University Extension work and University Publications also existed from the first. The Rush Medical College became affiliated in 1898, and absorbed in 1924. Other schools have been established as follows: School of Education (1901); School of Commerce and Administration (1902), known as the School of Business since 1932 (originally established in 1894 as the School of Commercial and Political Sciences); Law School (1902); School of Social Service Administration (1920); Graduate Medical School (1926); Nursing School (1926); and Graduate Library School (1926). Total assets in 1931 were nearly \$109,000,000, of which approximately \$60,000,000 were endowment. Total annual income was in excess of \$7,865,000. Three-fifths of the Trustees must be members of Christian churches, and of this three-fifths a majority must be members of Baptist churches.

THE CERTIFICATE OF INCORPORATION OF THE UNIVERSITY OF CHICAGO¹

Filed September 10, 1890

Amended July 12, 1923, Amendment filed October 10, 1923

Amended November 11, 1926, Amendment filed
December 8, 1926

Amended July 10, 1930, Amendment filed July 14, 1930

RECORDED IN COOK COUNTY, SEPTEMBER 20,
1890

AMENDMENT RECORDED IN COOK COUNTY,
OCTOBER 10, 1923

AMENDMENT RECORDED IN COOK COUNTY,
DECEMBER 8, 1926

AMENDMENT RECORDED IN COOK COUNTY,
JULY 11, 1930

STATE OF ILLINOIS, DEPARTMENT OF STATE

ISAAC N. PEARSON
Secretary of State

To all to whom these Presents shall come, Greeting:

WHEREAS, A Certificate, duly signed and acknowledged, having been filed in the office of the Secretary of State, on the 10th day of September, A. D., 1890, for the organization of

“THE UNIVERSITY OF CHICAGO,”

under and in accordance with the provisions of “An Act concerning Corporations,” approved April 18, 1872, and in force July 1, 1872, and all acts amendatory thereof, a copy of which certificate is hereto attached;

Now, therefore, I, ISAAC N. PEARSON, Secretary of State of the State of Illinois, by virtue of the powers and duties vested in me by law, do hereby certify that the said “The University of Chicago” is a legally organized Corporation under the laws of this State.

IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the great Seal of State. Done at the City of

¹This copy of the Charter of the University of Chicago and the footnote data in regard to Section 3, was obtained from handbooks entitled, *By-Laws of the Board of Trustees*, published, 1922, 1924, 1928 and 1930, by the *University of Chicago*.

Springfield, this 10th day of September in the year of our Lord One Thousand Eight Hundred and Ninety, and of the Independence of the United States the one hundred and fifteenth.

(Signed) I. N. Pearson
Secretary of State

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

*To the Honorable Isaac N. Pearson,
Secretary of State:*

We, the undersigned, John D. Rockefeller, E. Nelson Blake, Marshall Field, Fred. T. Gates, Francis E. Hinckley, and Thomas W. Goodspeed, citizens of the United States, desiring to associate ourselves for the lawful purposes hereinafter stated, and for the purpose of forming a corporation (not for pecuniary profit), under the provisions of the Act of the General Assembly of the State of Illinois, entitled, "An Act concerning Corporations," approved April 18, 1872, and of the several acts amendatory thereof, do hereby state and certify as follows, to wit:

1. The name by which said corporation shall be known in law is

"THE UNIVERSITY OF CHICAGO."

2. The particular objects for which said corporation is formed are to provide, impart, and furnish opportunities for all departments of higher education to persons of both sexes on equal terms; to establish, conduct, and maintain one or more academies, preparatory schools, or departments, such academies, preparatory schools, or departments to be located in the city of Chicago or elsewhere as may be deemed advisable; to establish, maintain, and conduct manual-training schools in connection with such preparatory departments; to establish and maintain one or more colleges, and to provide instruction in all collegiate studies; to establish and maintain a university, in which may be taught all branches of higher learning, and which may comprise and embrace separate departments for literature, law, medicine, music, technology, the various branches of science, both abstract and applied, the cultivation of the fine arts, and all other branches of professional or technical education which may properly be included within the purposes and objects of a university, and to provide and maintain courses of instruction in each and all of said departments; to prescribe the courses of study, employ professors, instructors, and teachers, and to maintain and control the government and discipline in said University, and in each of

the several departments thereof, and in each of the several academies, preparatory schools, or other institutions subordinate thereto, and to fix the rates of tuition, and the qualifications for admission to the University and its various departments; to receive, hold, invest, and disburse all moneys and property, or the income thereof, which may be vested in or intrusted to care of the said corporation, whether by gift, grant, bequest, devise, or otherwise, for educational purposes; to act as trustee for persons desiring to give or provide moneys or property, or the income thereof, for any one or more of the departments of said University, and for any of the objects aforesaid, or for any educational purpose; to grant such literary honors and degrees as are usually granted by like institutions, and to give suitable diplomas; and generally to pursue and promote all or any of the objects above named, and to do all and every of the things necessary or pertaining to the accomplishment of said objects or either of them.

3. (*As amended October 10, 1923, December 8, 1926, and July 10, 1930.*) The management of said corporation shall be vested in a Board of thirty Trustees, who shall be elected as follows:

The twenty-five Trustees now constituting said Board shall continue to serve for the terms for which they have been elected, the term of the eight Trustees of the second class expiring with the annual meeting of 1927, that of the eight Trustees of the third class expiring with the annual meeting of 1928, and that of the nine Trustees of the first class expiring with the annual meeting of 1929. After the taking effect of this amendment, five additional Trustees may be elected and each such additional Trustee, at the time of his election, shall be allotted to the first, second, or third class, as the Trustees may determine. Upon the expiration of the terms of these classes, successors shall be elected by the Trustees, by ballot, for three-year terms, the terms of one of the three classes expiring each year and the successors to that class being then elected at the annual meeting. Vacancies occurring by death, resignation, removal, or otherwise may be filled for the unexpired term by the Board at any meeting and the member elected shall belong to the class in which the vacancy occurs.

At all times not less than three-fifths of the Trustees shall be members of Christian churches, and of this three-fifths a majority shall be members of Baptist churches. At no time shall the number of Trustees belonging to any other denomination exceed the number of Baptists upon such Board.

No other religious test or particular religious profession shall ever be held as a requisite for election to said Board or for admission to said University or to any department belonging thereto or which shall be under the supervision or control of

this corporation, or for election to any professorship, or any place of honor or emolument in said corporation, or any of its departments or institutions of learning.

The membership of this corporation shall consist of the several persons who for the time being shall be acting as Trustees, and they shall annually elect Trustees to fill the places of those whose terms of office shall expire at the annual meeting. Persons not members of the corporation shall be eligible to election as Trustees, subject only to the qualifications hereinbefore stated.

The Board of Trustees may make By-Laws not inconsistent with the terms of this charter, or with the laws of this state, or of the United States, for the government and control of said corporation and of its several departments, and of the several institutions of learning under its care and control, and for the proper management of the educational, fiscal, and other affairs of said corporation, and for the care and investment of all moneys and property belonging to it, or given or intrusted to the said corporation for educational purposes. Said By-Laws shall provide for annual meetings.²

4. The location of the University and of its College of Arts, to be established by said corporation, shall be in Chicago, in the County of Cook, and State of Illinois.

5. The following persons are hereby selected as Trustees to control and manage said corporation for the first year of its corporate existence, to wit:

E. Nelson Blake, Ferd. W. Peck, Judge Joseph M. Bailey, Charles L. Hutchinson, Francis E. Hinckley, Herman H.

²The original charter of September 10, 1890, provided for a Board of twenty-one Trustees to serve for four-year terms. Two-thirds of the Trustees and also the President of the University were required to be "members of regular Baptist churches, that is to say, members of that denomination of Protestant Christians now usually known and recognized under the name of the regular Baptist denomination; and, as contributions of money and property have been and are being solicited, and have been and are being made, upon the conditions last named, this charter shall not be amended or changed at any time hereafter so as to abrogate or modify the qualifications of two-thirds of the Trustees and the President above mentioned, but in this particular this charter shall be forever unalterable".

By the amendment of October 10, 1923, the Board was increased to twenty-five members and the term of office reduced to three years. The former requirement that the two-thirds of the Trustees and the President of the University be members of the Baptist churches was changed to read, "At all times three-fifths of the Trustees shall be members of the Baptist churches." The President was thus exempted from the requirement and the former clauses defining "Baptist" and specifying that there be no change in those requirements were deleted.

By the amendment of December 8, 1926, the Board membership was increased to thirty.

By the amendment of July 14, 1930, the provision that "three-fifths of the Trustees shall be members of Baptist churches" was changed to read as given in Section 3, above.

Kohlsaatt, Hon. George A. Pillsbury, Eli B. Felsenthal, Professor William R. Harper, Martin A. Ryerson, Edward Goodman, George C. Walker, John W. Midgley, Judge Daniel L. Shorey, Alonzo K. Parker, D.D., C. C. Bowen, Andrew MacLeish, Frederick A. Smith, Henry A. Rust, Charles W. Needham, Elmer L. Corthell.

In testimony whereof we, the incorporators first above named, hereunto set our hands, and affix our seals, this 18th day of June, in the year of our Lord One Thousand Eight Hundred and Ninety.

John D. Rockefeller	(Seal)
E. Nelson Blake	(Seal)
Marshall Field	(Seal)
Francis E. Hinckley	(Seal)
Fred T. Gates	(Seal)
Thomas W. Goodspeed	(Seal)

JUDICIAL DECISIONS

Tax Exemption: Local Assessments. Section 10 of the Charter of 1857, exempting the property of the University of Chicago from all taxation and assessment, is unconstitutional insofar as it attempts to exempt such property from assessments of benefit for local improvements, such as street paving. Article 8, Section 2 of the Illinois Constitution of 1870, directing that all property received for college or university purposes, and the proceeds thereof, shall be faithfully applied to the objects for which such gifts were made, was intended to secure the public school fund of the state, and not the property of mere private educational institutions so as to exempt such property from assessment for benefits of local improvement. *University of Chicago v. Catholic Bishop*, 118 Ill. 565, 9 N. E. 189 (1886).

Note: The above decision represents the law of Illinois regarding the exemption of the property of private educational institutions from local or special assessments; but the case does not refer to the present corporation known as the University of Chicago, which was not at that time in existence.

Tax Exemption: Dormitories and Commons. The dormitories, dining hall, and "Reynolds Club" situated within the campus of the University of Chicago, and used for study,

living, and social purposes by students, alumni, and faculty, who are not charged sufficient room rent, board, and club dues to defray expenses, are within the ordinances of May 19, 1902, and March, 1905 of the city of Chicago, which provide that the property of charitable, religious, or educational institutions, used for such purposes and not used for gain or profit, or the production of revenue, shall not be subject to water taxes heretofore or hereafter assessed. *City of Chicago v. University*, 228 Ill. 605, 81 N. E. 1138, 10 Ann. Cas. 669 (1907).

Tax Exemption: Fraternity Houses. A fraternal educational association, not conducted for pecuniary profit, but to provide a home for students who are members of a fraternity at moderate cost to those able to pay, and gratuitously to those unable to pay, with officers serving without compensation and without dividends or profit is not an institution of public charity nor a beneficent or charitable organization, so as to be exempt from taxation under paragraph 7 of Section 2 of Chapter 120 of Cahill's Revised Statutes of 1925. *People ex rel. Carr, County Collector v. Alpha Pi of Phi Kappa Sigma Educational Association of University of Chicago*, 326 Ill. 573, 158 N. E. 213 (1927).

Note: This decision states the law in Illinois regarding tax exemption of fraternities. However, one fraternity at the University of Chicago has obtained exemption by virtue of another decision of the Supreme Court which was based on technical grounds. A digest of the decision in this exceptional case, which was before the court in three separate instances, appears below.

Tax Exemption: Fraternity House. The County Court of Cook County, Illinois, having adjudged the property of Omega Chapter of Psi Upsilon fraternity exempt from taxation, as that of a charitable corporation, can not set aside its judgment after the expiration of the term of court in which it was made; and the property remains exempt. *People ex rel. Carr v. Psi Upsilon Fraternity*, 320 Ill. 326, 150 N. E. 677 (1926).

The judgment sustaining objections to the collection of taxes is conclusive in an action to collect taxes for subsequent years, where the property was adjudicated to be exempt on the same grounds relied upon in the later suit and there has been

no change in conditions. *People ex rel. Carr v. Psi Upsilon Fraternity*, 324 Ill. 540, 155 N. E. 279 (1927).

It is the primary use to which property is put which determines whether it is exempt from taxation, the conclusion in each case depending upon the facts; and property owned by a college fraternity as a charitable organization and used for charitable and educational purposes is exempt, notwithstanding during summer months it is incidentally used in renting rooms to other students. *People ex rel. Harding v. Psi Upsilon Fraternity*, 335 Ill. 317, 167 N. E. 16 (1929).

Proof of Subscription. In an action by the University of Chicago against a decedent's estate, the secretary of the university, not having any personal interest in the result, was permitted to testify to a personal transaction with the deceased. Where a subscription paper provided that the sums subscribed might be paid by notes, it was held that the burden of showing that the notes had been executed and paid was on the subscriber. *Chicago University v. Emmert*, 108 Iowa 500, 79 N. W. 285 (1899).

UNIVERSITY OF CINCINNATI

CINCINNATI, OHIO

A municipal university incorporated in 1870. Its first resources consisted of property devised in the will of Charles McMicken. In 1872 legislation was passed enabling the city of Cincinnati to issue bonds to provide a suitable building. In 1893 the city levied a tax of three-tenths of a mill for the support of the university, and in 1906 the rate of the levy was raised to five-tenths of a mill. The university now consists of the College of Liberal Arts (1870), the College of Engineering (1900), the College of Medicine (1896), the Teachers College (1905), the Graduate School (1906), the College of Commerce (1912), the College of Law (1918), the School of Applied Arts (1922), and the School of Household Administration (1924). In 1919 the Colleges of Commerce and Engineering were merged, and are now known as the College of Engineering and Commerce. At various times the university has affiliated and absorbed other local medical colleges. In similar manner the College of Law was established by the merging of the Cincinnati College of Law with the university. In 1930 the total endowment of the university exceeded \$8,760,000 and the total current income was more than \$2,125,000.

LAWS RELATING TO THE UNIVERSITY OF CINCINNATI

STATUTORY PROVISIONS¹

SECTION 4001. Administration, management. In any municipal corporation having a university supported in whole or in part by municipal taxation all the authority, powers and control vested in or belonging to such corporation with respect to the management of the estate, property and funds given, transferred, covenanted (*sic*) or pledged to such corporation in trust or otherwise for such university, as well as the government, conduct and control of such university shall be vested in and exercised by a board of directors consisting of nine electors of the municipal corporation.² (96 v. 91, Sec. 217.)

SECTION 4002. Directors, how appointed. Such directors shall be appointed by the mayor of the municipal corporation, three for a term of two years, three for a term of four years and three for a term of six years, and thereafter as the terms expire the mayor shall appoint three directors for a term of six years each and shall fill all vacancies in the board. Such board of directors shall be known as "The Board of Directors of
. . . . University" (filling out blank with the name of the university). (96 v. 91, Sec. 217.)

SECTION 4003. Powers and duties. Such directors shall serve without compensation and shall have all the powers and perform all the duties conferred or required by law in the government of such university, and the execution of any trust with respect thereto imposed upon the municipal corporation. (96 v. 91, Sec. 217.)

¹*Throckmorton's Annotated Code of Ohio*, 1929, Sections 4001-4003, 4251-4252, 4666, and 7902-7922.

²The original act of 1870, "To enable cities of the First Class to aid and promote Education," provided the legal basis for the establishment of the Universities of Cincinnati and Toledo, and, being incorporated in the Code of 1880, became the nucleus for the present statutory provisions for municipal colleges and universities in Ohio. The Act of 1870 provided municipal colleges be governed by "Boards of Directors, nineteen in number, of whom the mayor of the city for the time being shall be one, and the others shall be appointed by the common council," six to be nominated to the council by the city Board of Education. The term of office was fixed at six years. (*Laws of Ohio*, 1870, pp. 86-89.)

Amended, *Laws of Ohio*, 1892, pp. 31-32, giving the judge or judges of the Superior Court of those cities having such a court, otherwise the judge or judges of the Common Pleas Court of the County, the authority to appoint trustees to fill vacancies.

Amended, *Laws of Ohio*, 1902, p. 91, establishing the board as at present constituted.

SECTION 4251. Appointment of municipal officers. The director of public service, director of public safety, directors of the university, street commissioner, or any board or officer whose appointment is required herein shall be appointed not earlier than the second Monday in January and not later than the first Monday in February, and shall hold their respective offices until their successors are appointed as herein required. (97 v. 39, Sec. 223.)

SECTION 4252. Mayor shall fill vacancy in office or department. In case of death, resignation, removal or disability of any officer or director in any department of any municipal corporation, unless otherwise provided by law, the mayor thereof shall fill the vacancy by appointment, and such appointment shall continue for the unexpired term and until a successor is duly appointed, or duly elected and qualified, or until such disability is removed. (103 v. 65; 97 v. 78, Sec. 228.)

SECTION 4666. Qualification; oaths. Each officer of the corporation, or of any department or board thereof, whether elected or appointed as a substitute for a regular officer, shall be an elector within the corporation, except as otherwise expressly provided, and before entering upon his official duties shall take an oath to support the constitution of the United States and the constitution of Ohio, and an oath that he will faithfully, honestly and impartially discharge the duties of the office. Such provisions as to official oaths shall extend to deputies, but they need not be electors. (R. S. Sec. 1737.)

SECTION 7902. Municipal university; powers of directors; deeds; by-laws. As to all matters not herein or otherwise provided by law, the board of directors of a municipal university, college or institution, shall have all the authority, power and control vested in or belonging to such municipal corporation as to the sale, lease, management and control of the estate, property and funds, given, transferred, covenanted or pledged to such corporation for the trusts and purposes relating thereto and the government, conduct and control of such university, college or institution. It may, unless prohibited by the terms of the trust under which such estate or property is held, sell, or lease perpetually or for any less period and with or without a privilege of purchase at a fixed price, any part or the whole of any such estate or property, and on sale, or on an election to purchase under a lease containing a privilege to purchase as aforesaid, convey or transfer such estate or property, and if heretofore any lease with a privilege of purchase at a fixed price shall have been executed and delivered by said board, or any board preceding it in office, for any part or the whole of any such estate or property, said board shall on an election to purchase under such lease convey such premises.

All instruments affecting real estate shall be executed on behalf of the board by such of its officers as it shall designate by resolution, authorizing the execution of such instrument and all deeds so executed shall convey all the title of said board and of such municipal corporation in and to the real estate so conveyed; it may appoint a clerk and all agents proper and necessary for the care and administration of the trust property and the collection of the income, rents and profits thereof; appoint the president, secretaries, professors, tutors, instructors, agents and servants, necessary and proper for such university, college or institution and fix their compensation; provide all the necessary buildings, books, apparatus, means and appliances, and pass such by-laws, rules and regulations concerning the president, secretaries, professors, tutors, instructors, agents and servants, and the admission, government and tuition of students as it deems wise and proper, and by suitable by-laws, delegate and commit the admission, government, management and control of the students, courses of studies, discipline and other internal affairs of such university, college or institution to a faculty which the board appoints from among the professors. (101 v. 237; R. S. Sec. 4099.)

SECTION 7903. City solicitor to act as attorney. When requested so to do by resolution of such board, the solicitor of such municipal corporation shall prosecute and defend, as the case may be, for and in behalf of the corporation, all complaints, suits and controversies in which the corporation or such board is a party, and which relate to any property, funds, trusts, rights, claims, estate or affairs under the control or direction of the board, or which, in any manner, relate to the conduct or government of such university, college or institution. (R. S. Sec. 4099.)

SECTION 7904. When board may confer degrees. The board of directors of such university, college or institution, upon the recommendation of the faculty thereof, may confer such degrees and honors as are customary in universities and colleges in the United States, and such others as with reference to the course of studies and attainments of the graduates in special departments it deems proper. (R. S. Sec. 4102.)

SECTION 7905. University defined. A university supported in whole or in part by municipal taxation, is defined as an assemblage of colleges united, under one organization or management, affording instruction in the arts, sciences and the learned professions, and conferring degrees. (R. S. Sec. 4102.)

SECTION 7906. Council may provide site for municipal university. The council of any such municipal corporation may set apart, or appropriate as a site for the buildings and grounds of such a university, college or institution, public grounds of

the city not especially appropriated or dedicated by ordinance to any other use, any other law to the contrary notwithstanding; and the board of education of such a municipal corporation also, for a like purpose may set apart, convey or lease for a term of years, any grounds or building owned or controlled by such board. (R. S. Sec. 4103.)

SECTION 7907. How such grant changed. Any grant for the use of such grounds, or buildings heretofore or hereafter made by any council or board of education, may be modified, changed or extended as to the time when it shall take effect and be in force, or otherwise, by agreement between such council, or board of education, and the board of directors of such university, college or institution. Such council shall be taken and held to be the representative of such municipal corporation vested with the title, right of possession and entire control of such property for the purposes of a new grant. (R. S. Sec. 4103.)

SECTION 7908. Tax levies; rate, etc., for support of city university, college or institution; when taxes shall be levied; not subject to any limitations, except. The council annually may assess and levy taxes on all the taxable property of such municipal corporation to the amount of five-tenths of one mill on the dollar valuation thereof, which shall include the amount required to pay the interest, sinking fund and retirement charges on all bonds issued for the university,³ to be applied by such board to the support of such university, college or institution and also levy and assess annually five one-hundredths of one mill on the dollar valuation thereof, for the establishment and maintenance of an astronomical observatory, or for other scientific purposes, to be determined by the board of directors and to be used in connection with such university, college or institution, the proceeds of which shall be applied by the board of directors for such purpose exclusively. But such taxes shall only be levied and assessed when the chief work of such university, college or institution is the maintenance of courses of instruction, in advance of, or supplementary to, the instruction authorized to be maintained in high schools by boards of education.

The above tax levies shall not be subject to any limitations of rates of taxation or maximum rates provided by law, except the limitations herein provided, and the combined maximum limitation imposed by section 5625-2 of the General Code. (111 v. 254; 103 v. 472; R. S. Sec. 4104. Eff. July 16, 1925.)

³Amended, 1931, to make the tax levy "exclusive of the amount required to pay the interest, sinking fund and retirement charges on all bonds issued for the university (omitting the clause, "which have not been excluded by vote of the people from the combined maximum tax rate imposed by section 5649-5b of the General Code")." *Laws of Ohio*, 1931, pp. 849-50.

SECTION 7909. When levy to be made; control and custody of funds. Such levies shall be made by the council at the time, and in like manner as other levies for other municipal purposes, and must be certified by it and placed upon the tax duplicate as other municipal levies. The funds of any such university, college or institution shall be paid out by the treasurer upon the order of the board of directors and the warrant of the auditor; provided, however, that the board of directors of any such municipal university, college or institution may assume control and custody of such funds, by adopting a resolution to that effect, whereupon said funds upon receipt of the same by the treasurer of the municipal corporation shall be paid over by him to the said board of directors upon the warrant of the auditor, and thereafter the possession and disbursement of said funds shall be subject to the order of said board. (112 v. 105; R. S. Sec. 4104. Eff. July 12, 1927.)

SECTION 7910. Municipal university; construction, improvement, enlargement, equipping and furnishing of buildings, etc. The taxing authority of a municipal corporation having a university supported in whole or in part by municipal taxation may provide for the construction, improvement, enlargement, equipping and furnishing of buildings for such municipal university. In the use of funds provided for such purposes, whether from taxation or the issue of bonds, all power and control shall be vested in the board of directors of the municipal university. Such board shall make all contracts necessary for the construction, improvement, enlarging, equipping and furnishing of the buildings specified and the equipment thereof; supervise their erection, completion and equipment and issue proper vouchers for the payment out of such fund of money due under such contracts and for any other expenses connected with the erection, completion and equipment of such building. (112 v. 364, Sec. 4; 99 v. 133, Sec. 1. Eff. Aug. 10, 1927.)

SECTIONS 7911 to 7914. Repealed, 112 v. 364, Sec. 21. (112 v. 385, Sec. 21; 99 v. 133, Secs. 2-4. Eff. Aug. 10, 1927.)

SECTION 7915. Board of directors of educational institution may accept educational trusts. The board of directors of a university, college or other educational institution of any municipal corporation, in the name and on behalf of such corporation, may accept and take any property or funds heretofore or hereafter given to such corporation for the purpose of founding, maintaining or aiding a university, college or institution for the promotion of education, and upon such terms, conditions and trusts consistent with law as such board deems expedient and proper for that end. (R. S. Sec. 4095.)

SECTION 7915-1. Exemption from taxation. All such property, personal or mixed, or real property located within the

county in which an university, college or other educational institution of any municipal corporation is located, heretofore or hereafter so given to or received by the board of directors of a university, college or other educational institution of any municipal corporation, the rents, issues, profits and income of which are used exclusively for the use, endowment or support of a university, college or other educational institution of any municipal corporation, shall be exempted from taxation so long as such property or the rents, issues, profits or income thereof is used for and exclusively applied to the endowment or support of such university, college or other educational institution of such municipal corporation. (102 v. 32.)

SECTION 7916. How trust funds to be applied. For the further endowment, maintenance and aid of any such university, college or institution heretofore or hereafter founded, the board of directors thereof, in the name and in behalf of such municipal corporation may accept and take as trustee and in trust for the purposes aforesaid any estate, property or funds which may have been or may be lawfully transferred to the municipal corporation for such use by any person, persons or body corporate having them, or any annuity or endowment in the nature of income which may be covenanted or pledged to the municipal corporation, towards such use by any person, persons or body corporate. Any person, persons or body corporate having and holding any estate, property or funds in trust or applicable for the promotion of education, or the advancement of any of the arts or sciences, may convey, assign and deliver these to such municipal corporation as trustee in his, their or its place, or covenant or pledge its income or any part thereof to it. Such estate, property, funds or income shall be held and applied by such municipal corporation in trust for the further endowment, maintenance and aid of such university, college or institution, in accordance nevertheless with the terms and true intent of any trust or condition upon which they originally were given or held. (R. S. Sec. 4096.)

SECTION 7917. Trusteeship to vest in city, etc. Upon such transfer and the acceptance thereof the municipal corporation and its successors, as trustees shall become and be perpetually obligated and held to observe and execute such trust in all respects according to any other or further terms or conditions lawfully agreed upon at the time of such transfer and acceptance. Any court having jurisdiction of the appointment of trustees of such trust for educational purposes, in a proceeding therefor, duly instituted and had, may, with the consent of its council, appoint and constitute such municipal corporation, trustee of the estate, property and funds so transferred to it, and dispense with bond and surety upon the part of the

municipality for the performance of such trust, unless that is required by the original terms or conditions thereof, and upon the due transfer and acceptance of such trust shall release and fully discharge the trustee or trustees so transferring it. Any acceptance or acceptances by such municipal corporation of any or all property, funds, rights, trust estate or trusts heretofore given, granted, assigned, or otherwise conveyed or transferred to or bestowed upon such a municipal corporation or to or upon such a university, college or institution in good faith, and which are still held and retained by such municipality or such a university, college or institution, shall be held and deemed to be valid and binding as to all parties. (R. S. Sec. 4097.)

SECTION 7918. Account of receipts and expenditures; board of directors may control moneys. The accounts of such trust estate, property and funds, and of the income and expenditure thereof, shall be kept by the auditor of such municipal corporation entirely distinct from all other accounts or affairs of the municipality and the moneys must be kept by the treasurer of the municipal corporation distinct from other moneys; provided, however that the board of directors of any such municipal university, college or institution may keep all such accounts and retain the control and custody of said moneys, if it shall by resolution determine to do so. Such board of directors, at all times, must confine their disbursements for current expenses within the income of the trust, estate, property and funds, and annually shall report to the mayor and council of such municipality a full statement of the accounts of administration of such trust and other funds. (112 v. 105; R. S. Sec. 4101. Eff. July 12, 1927.)

SECTION 7919. Investments. Such board may invest any part of the funds belonging to or set apart for the use of such university, college or institution or to any department thereof, as it from time to time deems proper in bonds of the United States, or of the state of Ohio, or of any municipal corporation of this state, or any county, or school district herein, or in any other bonds or first mortgage securities approved by it, and may use any funds, including those arising from sales of any property sold under section 7902 hereof, (provided the terms of the trust do not prohibit such use), in the improvement of any real or leasehold estate belonging either to the particular trust of which the property sold was part or to any other trust under its control and management; or in the improvement of any real or leasehold estate set apart for the use of such university, college or institution. (113 v. 282, effective July 21, 1929. 101 v. 237; R. S. Sec. 4101.)

SECTION 7920. Citizens may not be charged for admis-

sion of children. Citizens of such municipalities shall not be charged for instruction in the academic department, except in professional courses therein. Such board of directors may charge fees for any purpose to students in other departments and to students in professional courses in the academic department, and may charge fees for purposes other than instruction to students in the academic department. From time to time they may make such university, college or institution free in any or all of its departments to citizens of the county in which it is located. The board of directors may receive other students on such terms as to tuition or otherwise as they see fit. (110 v. 37; R. S. 4100. Eff. July 3, 1923.)

SECTION 7921. Board of education to have control and management of property held in trust for educational purposes. The custody, management and administration of any and all estates or funds, given or transferred in trust to any municipality for the promotion of education, and accepted by the council thereof, and any institution for the promotion of education heretofore or hereafter so founded other than a university as defined in this chapter, shall be committed to and exercised by, the board of education of the school district including such municipality. Such board of education shall be held the representative and trustee of such municipality in the management and control of such estates and funds so held in trust and in the administration of such institution, excepting always funds and estates held by any municipality which are used to maintain a university as heretofore defined. (R. S. Sec. 4105.)

SECTION 7922. Tax levy. For the uses and purposes of such board of education in administering such trusts, the council of such municipality annually may levy taxes on all the taxable property of such municipal corporation to the amount of three-tenths of one mill on the dollar valuation thereof. (R. S. Sec. 4105.)

JUDICIAL DECISIONS

Interpretation of the will of the Founder. The will of Charles McMicken, bequeathing his residuary estate to the city of Cincinnati in trust for the founding of one or more educational institutions, was null and void insofar as it related to the disposition of his real property in the state of Louisiana. A testamentary disposition having for its object the foundation of colleges under the administration of a municipal corporation, as trustee forever, is a *fidei commissum* or "double trust"

prohibited by Louisiana law; and under the Civil Code, persons residing outside the state can not dispose of real property which they possess within the state, in a manner contrary to its laws. *Perin v. McMicken's Heirs*, 15 La. Ann. 154 (1860).

Note: This decision diverted property valued at nearly half a million dollars, and reduced the value of McMicken's whole bequest to the city of Cincinnati by about one-half. It did not affect the disposition of his real property located in states other than Louisiana, nor the disposition of any of his personality. This decision was unaffected by the decision of the United States Supreme Court upholding the capacity of the city of Cincinnati to take and administer the trust created by the will of McMicken.

The City of Cincinnati as Trustee. The city of Cincinnati, as a corporation, is capable of taking in trust devises and bequests for charitable uses, and can take and administer the devises and bequests in the will of C. McMicken, which provides that the property devised shall be forever devoted to the support of one or more educational institutions. These devises are valid in equity and may be enforced without the intervention of legislation by the state of Ohio. The section of McMicken's will directing that the real estate shall not be alienated, creates a perpetuity allowed by law and equity in the cases of charitable trusts. *Perin v. Carey*, 65 U.S. (24 How.) 465, 3 O.F.D. 634 (1860).

Power to Change Location. The devise of McMicken was not a private one, but a gift to a general public use, and equity will enforce its provisions, or so mold them to suit changed circumstances, as will best carry out the real intentions of the testator and make the devise most conducive to the welfare of the beneficiaries. Should the trustees remove the university to another and more suitable site, they would be authorized under the will to lease the present site and treat it generally as the other real estate devised for the purpose of the university. Acts or omissions of the trustees can not create a forfeiture and the reversion of the property to the donor's heirs. The court would only remove the trustees and appoint others, or compel due performance. Thus the university was moved from the Mc-

Micken residence to a site in Burnet Park, donated by the city. *Cincinnati v. McMicken*, 6 O.C.C. 188, 3 O.C.D. 409, affirmed without opinion, 29 Bull. 168 (1892).

Merging of Cincinnati College without Consent of Trustees, Invalid. The statute of April 15, 1892 (89 Ohio Laws 647) which in terms gives absolute control and management of the affairs and property of the Cincinnati College to the Directors of the University of Cincinnati, is an unconstitutional taking of private property, and is therefore void. The Cincinnati College is a private corporation with a charter wherein the state reserved the right to amend; but the reserved right to amend the charter does not include the power to take all the property from the control of the corporation, and place it under the control of another corporation. *State ex rel. White v. Neff*, 52 O.S. 375, 40 N.E. 720, 28 L.R.A. 409 (1895).

Note: In 1896, on the initiative of the trustees of Cincinnati College, a contract was made by which their Law School was affiliated with the Law Department of the University of Cincinnati. In 1918 the stockholders of Cincinnati College voluntarily transferred nearly all their stock to the directors of the University of Cincinnati, who elected themselves and three other persons as trustees of Cincinnati College.

Determination of Residence of Student. The residence of a student is usually temporary, and hence results the presumption that the residence of any particular student is temporary. In order to show the acquisition of domicile in the particular case, it is necessary to overcome this presumption by suitable evidence. A student 26 years of age who had been born in Germany, removed to Buffalo, New York at the age of 12, where his father became a naturalized citizen, and came to Cincinnati at the age of 19 to continue his schooling. After three years in a public high school, tuition free, he graduated and entered the University of Cincinnati. He was wholly self-supporting, earning his living by work for Hebrew Union College, teaching in a Jewish Sabbath School, and private tutoring. He had voted at three annual elections in Cincinnati. He did not expect to leave the city unless and until he might receive a call to serve some Jewish congregation as rabbi. He was adjudged a citizen of Cincinnati, entitled to free tuition.

State of Ohio ex rel. Kaplan v. Kuhn et al., 8 O.N.P. 197, 11 O.D. (N.P.) 321 (1901).

Power to Enclose Athletic Field. Physical culture is included as a necessary university purpose, and enclosure of part of the university grounds as an athletic field is a necessary and proper use thereof. *Board of Directors of University of Cincinnati v. City of Cincinnati*, 1 O.N.P. (N.S.) 105, 13 O.D. (N.P.) 741 (1903).

Power to Erect President's House. The erection of a house for the president of the University of Cincinnati, to be used both as a home for his family and for official functions of the university, as well as to promote closer intercourse between the president, the faculty and the students, is a proper exercise of a university function, and the use of moneys derived from municipal taxation for said purpose is not an abuse of the taxing power. *Cincinnati v. Jones*, 16 O.D. (N.P.) 343, 3 O.L.R. 455 (1905), affirmed, 18 O.C.D. 210, 3 O.L.R. 572 (1906).

Power to Pay Professors for War Service. The directors of the University of Cincinnati have discretionary power under the wills of two donors to pay, from the trust funds thereby given, to professors and instructors of the university who entered the military service of the United States in the war with Germany, such amounts as would make up the difference between their regular salaries and the compensation paid by the government. The propriety of expenditure to carry on a university must be determined in view of the facts and conditions that exist at the time. *Carrel v. State*, 11 Ohio App. 281, 30 O.C.A. 161, motion to certify overruled 17 O.L.R. 364, 64 Bull. 462, (1919).

COLBY COLLEGE

WATERVILLE, MAINE

A privately controlled college affiliated with the Baptist church. Chartered by the General Court of Massachusetts as the Maine Literary and Theological Institution in 1813. Successive changes of name as follows: Waterville College, 1821; Colby University, 1867; Colby College, 1899. Endowment in 1930, approximately \$1,465,000. Income from all sources in 1930, about \$285,000. The charter reserves to the state the right to alter or limit the powers of the college.

LAWS RELATING TO COLBY COLLEGE¹

LEGISLATIVE ACTS AND RESOLVES

LAWS OF MASSACHUSETTS: 1813-15

CHAPTER CXXXI

An Act to establish a Literary Institution in the District of Maine, within this Commonwealth.

SECTION 1. Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That there be erected and established in the District of Maine, in the township hereafter mentioned, a Literary Institution, for the purpose of educating youth, to be called and known by the name of The Maine Literary and Theological Institution, to be under the government and regulation of a body politic, as in this act is hereafter described.²

SECTION 2. Be it further enacted, That Daniel Merrill, Caleb Blood, Sylvanus Boardman, Thomas Green, Robert Low, Benjamin Titcomb, Thomas Francis, Ranson Norton, Daniel McMasters, Hon. James Campbell, Samuel Stinson, John Hovey, David Nelson, Alford Richardson, John Haynes, Samuel Baker, Joseph Bailey, Phineas Pilsbury, Hezekiah Prince, Moses Dennitt and John Neal, together with the President and Treasurer of the said Institution for the time being, to be chosen as in this act is hereafter directed, be, and hereby are elected a body politic and corporate, by the name of The President and Trustees of the Maine Literary and Theological Institution; and that they and their successors, and such others as shall be duly elected members of the said Corporation, shall be and remain a body politic and corporate, by that name forever.

SECTION 3. Be it further enacted, That for the more orderly conducting the business of the said Corporation, the President and Trustees shall have full power and authority, from time to time as they shall determine, to elect a Vice-President, Treasurer and Secretary of said Corporation, and to declare the tenure and duties of their respective offices, and also to remove any Trustee from the said Corporation, when in their judgment he shall be rendered incapable by age or otherways, of discharging the duties of his office, and to fill up all vacancies in the said

¹*Legislative Acts and Resolves and By-Laws of Colby College*, pp. 3-10. Published by Colby College.

²Name changed, 1821, to Waterville College; changed, 1867, to Colby University; changed, 1899, to Colby College. *Ibid.* pp. 7-9.

Corporation, by electing such persons for Trustees as they shall judge best: Provided nevertheless, That the number of the said Corporation, including the President of the said Institution, and the Treasurer for the time being, shall never be greater than thirty-one, nor less than twenty-one.³

SECTION 4. Be it further enacted, That the said Corporation may have one common seal, which they may change, break or renew at their pleasure; and that all deeds signed and delivered by the Treasurer, and sealed with their seal, by the order of the Corporation, shall, when made in their corporate name, be considered in law, as the deed of the said Corporation; and that the said Corporation may sue and be sued, in all actions real, personal and mixed, and may prosecute and defend the same to final judgment and execution, by the name of The President and Corporation of the Maine Literary and Theological Institution; and that the said Corporation shall be capable of having, holding and taking in fee simple, or any less estate, by gift, grant, devise or otherwise, any lands, tenements or other estates real or personal: Provided nevertheless, That the annual clear income of the same shall not exceed the sum of thirty thousand dollars.⁴

SECTION 5. Be it further enacted, That the said Corporation shall have full power and authority to determine at what times and places their meetings shall be holden, and on the manner of notifying the Trustees, to convene at such meetings, and also from time to time, to elect a President and Treasurer of said Institution, and such Professors, Tutors, Instructors and other officers of the said Institution, as they shall judge most for the interest thereof; and to determine the duties, salaries, emoluments and tenures of their several officers aforesaid; The said President for the time being, when elected and inducted into his office, to be *ex officio*, President of the said Corporation;⁵ and the said Corporation are further empowered to purchase or

³Amended, 1903, the words, "except as herein provided" being inserted after the word "trustees" and before the word "as", and providing that nine of the trustees be elected by the Alumni Association for terms of three years. *Ibid.* pp. 9-10.

Amended, 1917, providing that ten Alumni Trustees be elected, two each year for terms of five years. (*Laws of Maine*, 1917, Chap. 97, pp. 522-23.)

⁴Amended, 1887, to permit the trustees to serve as trustees for "Coburn Classical Institute and other incorporated academies and schools", and to increase the authorized holding of "Colby University" to an amount, "that the annual, clear income of the same shall not exceed the sum of fifty thousand dollars, instead of the amount specified in its charter." *Ibid.* pp. 8-9.

Amended, 1931, striking out the words, "by the name of the President and Corporation of the Maine Literary and Theological Institution" and inserting in place thereof the words, "by the name of the President and Trustees of Colby College", and by striking out the clause at the end limiting the property holdings of the institution. (*Laws of Maine*, 1931, Chap. 17, pp. 342-43.)

⁵Amended, 1874, abolishing the president's membership on the board, giving the board full powers. *Ibid.* p. 8.

erect and keep in repair, such houses and other buildings, as they shall judge necessary for the said Institution, and also to make and ordain, as occasion may require, reasonable rules, orders and by-laws, not repugnant to the laws of this Commonwealth, with reasonable penalties for the good government of said Institution, and also to determine and prescribe the mode of ascertaining the qualifications of the students requisite to their admission: Provided nevertheless, That no corporate business shall be transacted at any meeting, unless thirteen at least of the Corporation are present.

SECTION 6. Be it further enacted, That the clear rents, issues and profits of all the estate, real and personal, of which the said Corporation shall be seized or possessed, shall be appropriated to the endowment of the said Institution, in such manner as shall most effectually promote virtue and piety, and a knowledge of such of the languages, and of the liberal arts and sciences, as shall be hereafter directed from time to time by the said Corporation.

SECTION 7. Be it further enacted, That the Hon. John Woodman, Esq., be and he is hereby authorized and empowered to fix the time and place for holding the first meeting of the said Corporation, of which he shall give notice by an advertisement in a Portland, and one other eastern newspaper, at least fourteen days previous to the time of said meeting.

SECTION 8. Be it further enacted, That the Treasurer of said Corporation shall before he enters upon the execution of the duties of his office, give bonds to the said Corporation, in such sums and with such sureties as they shall approve of, conditioned for the faithful discharge of the said office, and for rendering a just and true account of his doings therein, when required; and that all the money, securities and other property of the said Corporation, together with all the books in which his accounts and proceedings as Treasurer were entered and kept, that shall be in his hands at the expiration of his office, shall, upon demand made upon him, his executors or administrators, be paid and delivered over to his successor in that office, and all moneys recovered by virtue of any suit at law, upon such bond, shall be paid over to the Corporation aforesaid, and subjected to the appropriation above directed in this act.

SECTION 9. Be it further enacted, That the Legislature of this Commonwealth may grant any further powers to, or alter, limit, annul or restrain any of the powers by this act vested in the said Corporation, as shall be judged necessary to promote the best interests of the said Institution; and the said Corporation shall be holden to render an account to the Legislature, whenever they shall see fit to require it, of all their proceedings, and the manner of disposing of the funds of said Institution.

SECTION 10. Be it further enacted, That there be, and thereby is granted a township of land six miles square, to be laid out and assigned from any of the unappropriated lands belonging to this Commonwealth, in the District of Maine, under the same restrictions, reservations and limitations, as other grants, for similar purposes, are now usually made; the same to be vested in the Corporation of said Institution, and their successors forever, for the use, benefit and purpose of supporting said Institution, to be by them holden in their corporate capacity, with full power and authority to settle, divide and manage the same tract of land or township, or any part thereof, or to sell, convey or dispose of the same, for settlement only, and to no one person a larger quantity than one thousand acres, in such way and manner, as shall best promote the welfare of said Institution; the same to be laid out under the direction of the committee for the sale of eastern lands, and a plan thereof returned to the Secretary's office, within three years after the expiration of the present war with Great-Britain.

(Approved by the Governor, Feb. 27, 1813.)

LAWS OF MASSACHUSETTS: 1816-18

CHAPTER VIII

An Act in addition to an act, entitled "An act to establish a Literary Institution in the District of Maine, within this Commonwealth."

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That the Maine Literary and Theological Institution be, and they are hereby authorized and empowered to locate and establish their buildings in any town within the counties of Kennebec or Somerset; any thing contained in the first section of the act, entitled "An act to establish a Literary Institution in the District of Maine, within this Commonwealth," to the contrary notwithstanding.

(Approved by the Governor, June 15, 1816.)

SPECIAL LAWS OF MAINE, 1820

CHAPTER 8

An Act to enlarge the powers of the Maine Literary and Theological Institution.

SECTION 1. Be it enacted by the Senate and House of Representatives in Legislature assembled, That the President and Trustees of the Maine Literary and Theological Institution are hereby authorized and empowered to confer such degrees as are usually conferred by Universities established for the educa-

tion of youth: Provided, That the said Corporation shall confer no degrees other than those of Bachelor of Arts, and Master of Arts, until after the first day of January, which will be in the year of our Lord eighteen hundred and thirty. And provided also, that the said Corporation shall not make or have any rule or by-law requiring that any member of the Trustees shall be of any particular religious denomination. Provided, That no Student belonging or who may hereafter belong to said Institution, sustaining a fair moral character, shall be deprived of any privileges of said Institution, or be subjected to the forfeiture of any aid which has been granted by said Institution, for the purpose of enabling him to prosecute his studies, or be denied the usual testimonials on closing his studies, or be denied admission to said Institution on the ground that his interpretations of the scriptures differ from those which are contained in the articles of faith adopted, or to be adopted by said Institution.

SECTION 2. Be it further enacted, by the authority aforesaid, That the Legislature of this State, shall have the right to grant any further powers to alter, limit or restrain any of the powers vested in said Corporation, as shall be judged necessary to promote the best interests thereof.

(This act passed June 19, 1820.)

UNIVERSITY OF COLORADO

BOULDER, COLORADO

A state university consisting of Schools of Arts and Sciences, Engineering, Education, Business Administration, Music, Pharmacy, Law (at Boulder), and Medicine (at Denver). Incorporated by the Territorial Legislature in 1861, and located at Boulder. Made a state institution by the Constitution of Colorado adopted in 1876. Endowment in 1930, \$75,000; annual mill-tax levy, \$800,000 for general purposes and \$156,000 for medicine; receipts from tuition and miscellaneous, \$540,000. The state constitution gives the governing board "the general supervision of the university, and the exclusive control and direction of all funds of and appropriations to the university."

LAWS RELATING TO THE UNIVERSITY OF COLORADO

TERRITORIAL LEGISLATION

An Act to establish the University of Colorado.¹

SYNOPSIS OF ACT

This act provided for the government of the University by a board of sixteen persons, designated in the act, seven to constitute a quorum for the first meeting and the trustees to fix, in the by-laws, the number necessary for a quorum thereafter. The trustees were empowered: to "fill all vacancies that may occur in their Board, by death, permanent removal from the Territory, resignation or refusal to act"; to locate the site of the University buildings; make necessary by-laws; appoint necessary officers to conduct and manage the University, fix their salaries and remove them at pleasure; prescribe the course of study and the terms of admission; "take such measures in regard to the endowment of said University, as they may think proper"; "obtain a loan or loans for the erection of such buildings . . . and issue certificates of such loan or loans, in sums not less than fifty dollars, which certificates may bear interest not exceeding thirty per cent per annum, to be secured by bond or mortgage upon the property of said University."

SECTION 12 directed, "That said University shall be located at the City of Boulder."

SECTION 11 gave the faculty control of "rules and regulations, in the conferring of honors and giving diplomas." The revenue act of the same year² specifically exempted the university from taxation.

The act of 1861 establishing the university was amended January 25, 1870,³ by an act which added five named persons to the board of trustees and authorized any member of the board to call the first meeting of the board. It was directed that the University be located at or near Boulder City.

An Act "Concerning the University of Colorado", approved February 6, 1874,⁴ appropriated fifteen thousand dollars to aid in erecting building and making improvements, conditional upon the raising of a similar amount by subscription. This act also provided that, "Each County shall be entitled to send one

¹*Laws of Colorado*, 1861, pp. 144-148.

²*Laws of Colorado*, 1861, pp. 117-132.

³*Laws of Colorado*, 1870, pp. 147-48.

⁴*Laws of Colorado*, 1874, pp. 307-308.

pupil under the age of sixteen years to said University, tuition free, said pupil to be selected by competitive examination before the County Superintendent of such County, and given to the highest scholarship."

An Act, "To provide a Fund for the Support and Completion of the University of Colorado, and the Management of the same,"⁵ was approved, February 11, 1876. By this act, fifteen thousand dollars was appropriated. Section 4 directed that, "The Board of Trustees of said University shall have no power or authority to create any indebtedness on said University beyond the means in the treasury to liquidate the same; and they shall not mortgage, encumber, or dispose of any of the grounds or buildings situated on the present site of the University." Section 8 authorized the Board to charge "a reasonable tuition fee for all pupils, both male and female, who may be admitted to said institution."

CONSTITUTIONAL PROVISIONS

(Adopted, March 14, 1876)⁶

ARTICLE IV

EXECUTIVE DEPARTMENT

SECTION 17. Executive officers make report. The officers of the executive department and of all public institutions of the state, shall, at least twenty days preceding each regular session of the general assembly, make full and complete reports of their actions to the governor, who shall transmit the same to the general assembly.

ARTICLE VIII

STATE INSTITUTIONS

SECTION 1. Established and supported by state. Educational, reformatory and penal institutions, and those for the benefit of the insane, blind, deaf and mute, and such other institutions as the public good may require, shall be established and supported by the state, in such manner as may be prescribed by law.

SECTION 5. State institutions—Property—Medical school. The following educational institutions, to-wit: The University at Boulder, the Agricultural College at Fort Collins, the School of Mines at Golden, and the Institute for the Education of Mutes, (which shall hereafter be known as Colorado School for Deaf and Blind), at Colorado Springs, are hereby declared to

⁵*Laws of Colorado*, 1876, pp. 183-84.

⁶*Compiled Laws of Colorado*, 1921, pp. 34-87.

be institutions of the State of Colorado, and the management thereof subject to the control of the state, under the provisions of the constitution, and such laws and regulations as the general assembly may provide, and the location of said institutions, as well as all gifts, grants and appropriations of money and property, real and personal, heretofore made to said several institutions, are hereby confirmed to the use and benefit of the same respectively; *Provided*, This section shall not apply to any institution, the property, real or personal, of which is now vested in the trustees thereof, until such property be transferred by proper conveyance, together with the control thereof, to the officers provided for the management of said institution by this constitution or by law; *And, provided further*, That the regents of the university may, whenever in their judgment the needs of the institution demand such action, establish, maintain and conduct all or any part thereof of the departments of medicine, dentistry and pharmacy, of the university, at Denver; *And, provided further*, That nothing in this section shall be construed to prevent state educational institutions from giving temporary lecture courses, commonly called "University Extension Work," and "Farmers' Institute and Short Courses," in any part of the state, or conducting class excursions for the purpose of investigation and study.

[Amended section as proposed by L. '21, p. 176. Adopted November 7, 1922; effective December 21, 1922. The original section read: "The following territorial institutions, to-wit: The University at Boulder, the Agricultural College at Fort Collins, the School of Mines at Golden, the Institute for the Education of Mutes at Colorado Springs, shall, upon the adoption of this constitution, become institutions of the state of Colorado, and the management thereof subject to the control of the state, under such laws and regulations as the general assembly shall provide; and the location of said institutions, as well as all gifts, grants, and appropriations of money and property, real and personal, heretofore made to said several institutions are hereby confirmed to the use and benefit of the same respectively; *Provided*, This section shall not apply to any institution, the property, real or personal, of which is now vested in the trustees thereof, until such property be transferred by proper conveyance, together with the control thereof to the officers provided for the management of said institution by this constitution, or by law."

A former amendment, proposed by L. '09, p. 324, and adopted November 8, 1910, authorized the regents of the University to establish, maintain or conduct "all but the first two years" of the departments of medicine, dentistry and pharmacy of the University, at Denver. The amendment of 1922 merely sub-

stituted the words "all or any part of," for the words "all but the first two years."]

ARTICLE IX EDUCATION

SECTION 8. Religious test and race discrimination forbidden—Sectarian tenets. No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as a teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian tenets or doctrines shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color.

SECTION 12. Regents of university. There shall be elected by the qualified electors of the state, at the first general election under this constitution, six regents of the university, who shall immediately after their election be so classified by lot, that two shall hold their office for the term of two years, two for four years and two for six years; and every two years after the first election there shall be elected two regents of the university, whose term of office shall be six years. The regents thus elected, and their successors, shall constitute a body corporate to be known by the name and style of "The Regents of the University of Colorado."

SECTION 13. President of university. The regents of the university shall, at their first meeting, or as soon thereafter as practicable, elect a president of the university, who shall hold his office until removed by the board of regents for cause; he shall be *ex officio*, a member of the board, with the privilege of speaking, but not of voting, except in cases of a tie; he shall preside at the meetings of the board, and be the principal executive officer of the university, and a member of the faculty thereof.

SECTION 14. Control of university. The board of regents shall have the general supervision of the university, and the exclusive control and direction of all funds of, and appropriations to, the university.

ARTICLE X REVENUE

SECTION 11. Maximum rate of taxation. The rate of taxation on property, for state purposes, shall never exceed four mills on each dollar of valuation; *Provided, however*, that in the discretion of the general assembly an additional levy of not to exceed one mill on each dollar of valuation may from time to time be authorized for the erection of additional buildings at,

and for the use, benefit, maintenance, and support of the state educational institutions; *Provided, further*, that the rate of taxation on property for all state purposes, including the additional levy herein provided for shall never exceed five mills on each dollar of valuation, unless otherwise provided in the constitution.

[Amended section as proposed by initiative petition, and adopted November 2, 1920. The original section read: "The rate of taxation on property for state purposes, shall never exceed six mills on each dollar of valuation, and whenever the taxable property within the state shall amount to one hundred million dollars, the rate shall not exceed four mills on each dollar of valuation; and whenever the taxable property within the state shall amount to three hundred million dollars, the rate shall never thereafter exceed two mills on each dollar of valuation unless a proposition to increase such rate, specifying the rate proposed, and the time during which the same shall be levied, be first submitted to a vote of such of the qualified electors of the state as in the year next preceding such election, shall have paid a property tax assessed to them within the state, and a majority of those voting thereon shall vote in favor thereof, in such manner as may be provided by law."]

[A former amendment, proposed by L. '91, p. 89, and adopted November 8, 1892, read as follows: "The rate of taxation on property, for state purposes, shall never exceed four mills on each dollar of valuation."]

STATUTORY PROVISIONS⁷

CHAPTER CLXIII

STATE EDUCATIONAL INSTITUTIONS

7996. Objects of the institution—Studies—Qualifications of students. SECTION 1. The objects of the University of Colorado, established by law, near Boulder city, in Boulder county, and state of Colorado, shall be to provide the best and most efficient means of imparting to young men and women, on equal terms, a liberal education and thorough knowledge of the different branches of literature, the arts and sciences, with their varied applications. The university, so far as practicable, shall begin the course of study in its collegiate and scientific departments at the points where the same are completed in high schools, and no student shall be admitted who has not previously completed the elementary studies in such branches as are taught in the common schools throughout the state. [G. S., Sec. 3438; G. L., Sec. 2748; R. S. '08, Sec. 6933.]

7997. Each county entitled to one pupil free. SECTION 2.

⁷*Compiled Laws of Colorado*, 1921.

Each county shall be entitled to send one pupil under the age of sixteen years to said university, tuition free; said pupil to be selected by competitive examination before the county superintendent of such county and given to the highest scholarship. [G. S., Sec. 3439; G. L., Sec. 2746; L. '74, p. 308, Sec. 1; R. S. '08, Sec. 6934.

7998. When tuition fee charged. SECTION 3. Provided that said university shall charge a reasonable tuition fee for all students attending from outside the state, or whose parents reside outside the state of Colorado. [L. '93, p. 474, Sec. 4; R. S. '08, Sec. 6935.

7999. Religious or irreligious societies not control. SECTION 4. The university shall never be under the control of any religious or irreligious denomination or society whatever. [G. S., Sec. 3440; G. L., Sec. 2749; R. S. '08, Sec. 6936.

8000. Six regents—Election and term of office—Body corporate. SECTION 5. The university shall be governed by a board of six regents, who shall be elected by the people of the state at a general election. The regents elected at the last general election shall at their first meeting be so classified by lot that two shall hold office for the term of two years, two for four years and two for six years, and hereafter there shall be elected every two years two regents of the university, whose term of office shall be six years. The regents thus elected and their successors in office shall constitute a body corporate to be known by the name and style of the regents of the university of Colorado. [G. S., Sec. 3441; G. L., Sec. 2750; R. S. '08, 6937.

8001. Oath of regents—Filed with secretary of state. SECTION 6. The members of the board of regents shall, before entering upon their duties, take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the constitution of the United States and of the state of Colorado, and that I will perform the duties of regent of the university of Colorado faithfully and to the best of my ability." Said oath or affirmation shall be filed in the office of the secretary of state. [G. S., Sec. 3442; G. L., Sec. 2751; R. S. '08, Sec. 6938.

8002. Governor fill vacancies—Tenure. SECTION 7. The governor of the state shall fill all vacancies that may occur in the board of regents, and the persons so appointed shall hold their offices until the next general election and until their successors elected thereat are duly qualified according to law. [G. S., Sec. 3444; G. L., Sec. 2753; R. S. '08, Sec. 6940.

8003. President—Election—Vote on tie only—Preside—Functions. SECTION 8. The regents of the university shall, at their first meeting or as soon thereafter as practicable, elect a president of the university, who shall hold his office until removed by the board for cause or until he shall resign the same.

He shall be *ex officio* a member of the board, with the privilege of speaking, but not voting except in cases of a tie. He shall preside at the meetings of the board and be the principal executive officer of the university and a member of the faculty thereof. [G. S., Sec. 3445; G. L., Sec. 2754; R. S. '08, Sec. 6941.]

8004. Meetings—Not less than two, yearly—Special—Quorum. SECTION 9. The meetings of the board of regents shall be held at such times and places as the board may appoint; *Provided*, Not less than two meetings per annum shall be held at the university. The president of the board may call special meetings where he deems it expedient, or special meetings may be called by any three members of the board, and a majority of the regents shall constitute a quorum and be competent for the transaction of business. [G. S., Sec. 3446; G. L., Sec. 2755; R. S. '08, Sec. 6942.]

8005. Board have control of university and funds. SECTION 10. The board of regents shall have the general supervision of the university, and the exclusive control and direction of all funds of and appropriations to the university. [G. S., Sec. 3447; G. L., Sec. 2756; R. S. '08, Sec. 6943.]

8006. Board enact rules—Appoint teachers—Remove—Fix fees. SECTION 11. The board of regents shall enact laws for the government of the university, and appoint the requisite number of professors and tutors, and all other officers, and shall determine the salaries of such officers, and the amount of fees to be paid for tuition. They shall remove any officer connected with the university when in their judgment the good of the institution requires it. [G. S., Sec. 3448; G. L., Sec. 2757; R. S. '08, Sec. 6944.]

8007. Departments—Degrees—Diplomas. SECTION 12. The university shall include a classical, philosophical, normal, scientific, law and such other departments, with such courses of instruction and elective studies as the board of regents may determine, and a department of the physical sciences, and the board shall have authority to confer such degrees, and grant such diplomas and other marks of distinction, as are usually conferred and granted by other universities; and the board of regents is hereby authorized to establish a preparatory department, which shall be under the control of said board of regents, as are the other departments of the university. Nothing in this section shall be so construed as to require the regents to establish the several departments other than the normal and preparatory, as herein provided, until such times as in their judgment the wants and necessities of the people require it. After June 1, 1907, the regents shall not be required to maintain a normal or a preparatory department. [L. '07, p. 590, Sec. 1; amending G. S., Sec. 3449; G. L., Sec. 2758; R. S. '08, Sec. 6945.]

8008. Natural specimens collected by state geologist.
SECTION 13. All specimens of natural history and geological and mineralogical specimens, which may hereafter be collected by the state geologist of Colorado, appointed by the state to investigate its natural history, shall belong to and be the property of the state university, and shall form a part of its cabinet. [G. S., Sec. 3450; G. L., Sec. 2749; R. S. '08, Sec. 6946.]

8009. Secretary—Duties—Books—Contents—Counter-sign. **SECTION 14.** The board of regents shall elect a secretary, who shall hold his office during the pleasure of the board. He shall record all the proceedings of the board of regents in a well bound book, to be kept for that purpose, and carefully preserve all its books and papers. His books shall show how the permanent fund of the university has been invested; the amount of each kind of securities, if any, with the date thereof, and when due; the interest thereon, and when and where payable; the amount of each loan, if any, and when made and payable to whom, and how secured, and at what rate of interest, and when and where payable. The secretary shall countersign and register all warrants for money on the treasurer, and the treasurer shall not pay a warrant on him for money unless the same be drawn by the president and countersigned by the secretary. [G. S., Sec. 3451; G. L., Sec. 2760; R. S. '08, Sec. 6947.]

8010. Treasurer—Duties—Bond—Conditions—Sureties.
SECTION 15. The board of regents shall elect a treasurer of the university, who shall hold his office at the pleasure of the board. He shall keep a true and faithful account of all moneys received and paid out by him, and shall pay all warrants in the order of presentation; and before entering upon the duties of his office he shall take and subscribe an oath that he will faithfully perform the duties of treasurer, and he shall also give a bond in the penalty of not less than twenty-five thousand dollars, conditioned for the faithful discharge of his duties as treasurer, and that he will at all times keep and render a true account of all moneys and other valuables received by him as such treasurer, and of the disposition he has made of the same, and that he will at all times be ready to discharge himself of the trust and to deliver up when required by said board all moneys, notes, bonds and other valuables entrusted to him, which bond shall have two or more good sureties, and shall be approved as to its form and the sufficiency of its sureties by the board of regents, and also by the attorney general and secretary of state, who shall endorse their approval on the same, and it shall be filed in the office of the latter. [G. S., Sec. 3452; G. L., Sec. 2761; R. S. '08, Sec. 6948.]

8011. Board fix salaries—Regent cannot be treasurer.
SECTION 16. The board of regents shall determine the compensa-

tion of the secretary and treasurer of the university, and the regents shall be ineligible to the office of treasurer. [G. S., Sec. 3453; G. L., Sec. 2762; R. S. '08, Sec. 6949.

8012. Board audit claims—Secretary countersign—Record. SECTION 17. The board of regents shall audit all claims against the university, and the president shall draw all warrants upon the treasurer for approved claims; but before payment such warrants shall be countersigned by the secretary, who shall keep a specific and complete record of all matters involving the expenditure of money, which record shall be submitted to the board of regents at each regular meeting of the same. [G. S., Sec. 3454; G. L., Sec. 2763; R. S. '08, Sec. 6950.

8013. Tax levy for support of university. SECTION 18. There shall be assessed upon all taxable property of the state in each year, beginning with the year A. D. 1903, for the support of the university of Colorado, two-fifths of one mill on each and every dollar of the assessed value of said taxable property, to be assessed and collected in the same manner and at the same time as is now, or may be prescribed by law, for the assessment and collection of state taxes; *Provided*, That from the funds so received under this act, during the first three years, at least \$100,000 shall be expended for buildings. [L. '03, p. 466, Sec. 1; amending G. S., Sec. 3456; G. L., Sec. 2765; R. S., '08, Sec. 6952.

8014. County treasurers keep separate accounts and fund—Auditor's warrant—Surplus. SECTION 19. The several county treasurers of the state shall keep a separate account of all taxes collected in pursuance of this act, and shall transmit the same to the state treasurer as a separate fund, and the auditor of state shall, upon the order of the president of the board of regents, countersigned by its secretary, draw his warrant upon said fund in favor of the treasurer of the university. The tax so collected and paid into the treasury of the university shall be for the support of the same, but if in any year the whole of the proceeds of said tax are not required for the ordinary purposes and expenses of the university, the said balance shall be added to and forever remain a part of the permanent fund of the said university. [G. S., Sec. 3457; G. L., Sec. 2766; R. S. '08, Sec. 6953.

8015. Additional tax levy. SECTION 20. In addition to the levy now authorized by law there shall be levied annually, beginning with the year 1915, upon all taxable property in the state of Colorado, for the use of the university of Colorado, five and one-half hundredths of one mill on each and every dollar of the assessed valuation of said taxable property, to be assessed and collected in the same manner and at the same time as is now or may hereafter be prescribed by law for the assessment and collection of state taxes. [L. '15, p. 483, Sec. 1.

8016. Appropriation of fund. SECTION 21. The entire fund derived from such levy each year is hereby appropriated for the support and maintenance of the university and for the construction of such buildings or other permanent improvements at the university as the board of regents may deem necessary. [L. '15, p. 483, Sec. 2.]

8017. County treasurer keep separate accounts. SECTION 22. Unless otherwise provided by law, the county treasurer of each county in the state shall keep a separate account of all moneys collected pursuant to this act and shall transmit the same monthly to the state treasurer as a separate fund; and the state auditor shall, from time to time, upon the written order of the president of the board of regents, countersigned by its secretary, draw warrants upon the said fund in favor of the treasurer of the university. [L. '15, p. 483, Sec. 3.]

8018. Additional mill levy. SECTION 23. In addition to the levy now authorized by law there shall be levied annually, beginning with the year 1917, upon all taxable property in the state of Colorado, for the use of the university of Colorado eight (8) hundredths of one mill, on each and every dollar of the assessed valuation of said taxable property, to be assessed and collected in the same manner, and at the same time as is now, or may hereafter be prescribed by law for the assessment and collection of state taxes. [L. '17, p. 535, Sec. 1.]

8019. Purpose of fund. SECTION 24. The entire fund derived from such levy each year is hereby appropriated for the support and maintenance of the University of Colorado. [L. '17, p. 535, Sec. 2.]

8019.1. Additional levy. In addition to the levy now authorized or which shall be authorized by law there shall be levied annually, beginning with the year 1927, upon all taxable property in the State of Colorado, for the use, benefit, maintenance, and support of the University of Colorado, eighty-six thousand, six hundred and forty-nine millionths (086,649) of one mill on each and every dollar of the assessed valuation of said taxable property to be assessed and collected in the same manner, and at the same time as is now or may hereafter be prescribed by law for the assessment and collection of state taxes. [L. '27, p. 702, Sec. 1; C-M.A.S., Sec. 7681h.]

8019.2. For erection of additional buildings. This levy is made pursuant to section eleven (11) of article X of the state constitution as amended authorizing an additional levy for the erection of additional buildings at and for the use, benefit, maintenance, and support of the state educational institutions. [L. '27, p. 703, Sec. 2; C-M.A.S., Sec. 7681i.]

8019.3. Appropriation of fund. The entire fund derived from such a levy each year is hereby appropriated for the use,

benefit, maintenance and support of the University of Colorado. [L. '27, p. 703, Sec. 3; C-M.A.S. Sec. 7681j].

8019.4. **How expended.** All moneys collected pursuant to this act shall be expended under the direction of the regents of the University of Colorado. [L. '27, p. 703, Sec. 4; C-M.A.S. Sec. 7681k.

8020. **Tax levy for medical school.** SECTION 25. In addition to all other taxes and levies now authorized by law, there shall be levied during each of the years 1921 and 1922 upon the taxable property of the state of Colorado, for the purpose hereinafter specified: two-tenths of one mill of each and every dollar of the assessed valuation of said taxable property, to be assessed and collected in the same manner and at the same time as is now or may hereafter be prescribed by law for the assessment and collection of state taxes. [L. '21, p. 591, Sec. 1.

8021. **Same—Part of levy authorized for educational institutions.** SECTION 26. Such entire levies and the funds raised thereunder shall be a part of the additional one mill levy authorized for state educational institutions by the amendment of article X, section 11, of the constitution of the state of Colorado, adopted by the affirmative vote of the people of the state of Colorado at the election on November 2nd, 1920. [L. '21, p. 591, Sec. 2.

8022. **Appropriation from levy.** SECTION 27. There is hereby appropriated to the university of Colorado out of the entire fund derived from such levies the sum of six hundred thousand dollars (\$600,000.00) for the construction, equipment and furnishing of buildings for the department of medicine of the university of Colorado, including a teaching hospital. The plans and specifications for all such buildings shall be prepared by resident architects of the state of Colorado. All of said buildings shall be erected at the place designated for the location of the psychopathic hospital and laboratory of the university of Colorado provided in chapter 169 of the session laws of 1919. [L. '21, p. 592, Sec. 3.

8023. **Regents direct expenditures.** SECTION 28. All moneys appropriated pursuant to this act shall be expended under the direction of the regents of the university of Colorado in the same way as the funds derived from taxation for the support and maintenance of the university; *Provided, however,* That no part of the moneys so appropriated shall be turned over or paid to the regents of the university of Colorado until said regents shall first have received from the general education board for the same purposes hereinbefore specified an amount not less than \$700,000.00 and no contracts shall be made or entered into by said regents for any buildings or equipment provided by this act in excess of the amounts appropriated hereby and

amounts actually received by said regents before such contracts are made. [L. '21, p. 592, Sec. 4.]

8024. Additional tax levy. SECTION 29. In addition to the levy now authorized or which shall be authorized by law there shall be levied annually, beginning with the year 1921 upon all taxable property in the state of Colorado, for the use, benefit, maintenance and support of the University of Colorado, pursuant to the amendment to section 11 of article X of the state constitution authorizing additional levy for the support of state educational institutions, one thousand six hundred eighteen ten-thousandths (.1618) of one mill, on each and every dollar of the assessed valuation of said taxable property, to be assessed and collected in the same manner, and at the same time as is now or may hereafter be prescribed by law for the assessment and collection of state taxes. [L. '21, p. 794, Sec. 1.]

8025. Appropriation of fund. SECTION 30. The entire fund derived from such levy each year is hereby appropriated for the use, benefit, maintenance and support of the University of Colorado. [L. '21, p. 794, Sec. 2.]

8025.1. Annual tax levy. There shall be levied annually, beginning with the year 1927, upon all taxable property in the State of Colorado, for the use, benefit, maintenance, and support of the medical school and the nurses training school of the University of Colorado one tenth (.10) of one mill on each and every dollar of the assessed valuation of said taxable property, to be assessed and collected in the same manner, and at the same time as is now or may hereafter be prescribed by law for the assessment and collection of state taxes. [L. '27, p. 704, Sec. 1; C-M.A.S. Sec. 5597t1.]

8025.2. For erection of additional buildings. This levy is made pursuant to section eleven (11) of article X of the state constitution as amended authorizing an additional levy for the erection of additional buildings at and for the use, benefit, maintenance and support of the state educational institutions. [L. '27, p. 705, Sec. 2; C-M.A.S. Sec. 5597u1.]

8025.3. Appropriation of fund. The entire fund derived from such levy each year is hereby appropriated for the use, benefit, maintenance and support of the medical school and nurses training school of the University of Colorado. [L. '27, p. 705, Sec. 3; C-M.A.S. Sec. 5597v1.]

8025.4. How expended. All moneys collected pursuant to this act shall be expended under the direction of the regents of the University of Colorado. [L. '27, p. 705, Sec. 4; C-M.A.S. Sec. 5597w1.]

8026. President report yearly—Contents. SECTION 31. The president of the university shall make a report on the first day of September of each year to the board of regents, which

shall exhibit the condition and progress of the institution in its several departments, the different courses of study pursued therein, the branches taught, the means and methods of instruction adopted, the number of students, with their names, classes and residences, and such other matters as he may deem proper to communicate. [G. S., Sec. 3458; G. L., Sec. 2767; R. S. '08, Sec. 6954.]

8027. Duty of state board of land commissioners—Locate and report. SECTION 32. The state board of land commissioners are hereby authorized and required to locate all the lands that have been donated by the United States to the state of Colorado for the benefit of the university, and report to the next general assembly the number of acres so located, where situated, their character and estimated value. [G. S., Sec. 3460; G. L., Sec. 2769; R. S. '08, Sec. 6956.]

8028. When lands sold—Proceeds. SECTION 33. None of the lands located as required in the preceding section of this act shall be sold except as may be provided by the general assembly, and whenever the said lands are sold, the proceeds of such sale, being for the whole or a part of said lands, shall be paid over to the regents by an order drawn by the president of the board, having been so authorized by the board of regents, upon the state treasurer, said order being first countersigned by the secretary of the university. [L. '95, p. 238, Sec. 2; amending G. S., Sec. 3461; G. L., Sec. 2770; R. S. '08, Sec. 6957.]

8029. Regents control money from leasing or sale of university lands. SECTION 34. All moneys which have heretofore arisen or may hereafter arise from the sale of public lands belonging to the university of Colorado, or from the leasing of lands belonging to the said university, or from interest arising on the investment of such funds, shall be and are hereby placed under the exclusive control of the regents of the said university, and the treasurer of the state of Colorado is hereby instructed to turn over to the said regents all the moneys, warrants, bonds and other securities, of any nature whatsoever, that have come from the sale of said public lands belonging to said university. [L. '95, p. 237, Sec. 1; R. S. '08, Sec. 6958.]

8030. No funds loaned to president or regents. SECTION 35. No funds of the university shall ever be, directly or indirectly, loaned to the president or any of the regents, professors or other officers of the said university. [L. '95, p. 238, Sec. 3; amending G. S., Sec. 3462; G. L., Sec. 2771; R. S. '08, Sec. 6959.]

8031. Donations—Invested—Special donations. SECTION 36. All donations of money, securities or other property, shall be conveyed to the regents of the university, and invested as other funds of the university, and donations may be made to, and for the sole use of, any one of the departments of the university,

and donations so made shall be kept a separate fund for the use of such department. [G. S., Sec. 3463; G. L. Sec. 2772; R. S. '08, Sec. 6960.

8032. Attorney general legal adviser—Appear in suits. SECTION 37. The attorney general of the state shall be the legal adviser of the president and board of regents of the university, and he shall institute and prosecute or defend all suits in behalf of the same. [G. S., Sec. 3464; G. L., Sec. 2773; R. S. '08, Sec. 6961.

8033. Contracting debt beyond annual income, forbidden. SECTION 38. The board of regents are hereby prohibited from creating any debt as against the university, or in any manner encumbering the same, or of incurring any expense beyond their ability to pay from the annual income of the university, for the then current year. [G. S., Sec. 3465; G. L., Sec. 2774; R. S. '08, Sec. 6962.

Additional Statutes Relating to the
University of Colorado

144. Reports of officials of state institutions. SECTION 18. That every member of every board, commission or other governing body of any state institution and every officer and employé of any state institution, board, commission or other governing body of any such institution shall upon request of the governor, make report of all transactions, duties performed and moneys collected and disbursed and any other matter or thing concerning the conduct of the affairs of such state institution. [L. '13, p. 587, Sec. 1.

320. Educational institutions—Head officers report annually. SECTION 48. The president of the board of regents of the university of Colorado, the president of the board of trustees of the school of mines, the president of the state board of agriculture for the state agricultural college, and the Fort Lewis school of agriculture, the president of the board of trustees of the state teachers college and the state normal school, the president of the board of trustees of the Colorado school for deaf and blind shall, on the first day of July of each year, make a report to the governor of the state and to the state superintendent of public instruction covering the work of their respective institutions for the twelve months previous. [L. '15, p. 365, Sec. 1.

321. Contents of report. SECTION 49. Such reports shall contain:

(a) A financial statement in the form prescribed by the public examiner, showing the receipts from all sources whatever and all expenditures;

(b) A statement of the work and general condition of the institution;

(c) Such statistical and other information as they may deem necessary and useful, or may be required by the state superintendent of public instruction or by the governor. [L. '15, p. 365, Sec. 2.]

322. Superintendent public instruction publish. SECTION 50. It shall be the duty of the superintendent of public instruction to publish the reports made in pursuance of this act, with his biennial report to the governor; *Provided*, That he shall not publish more than ten printed pages for each institution. [G. S., Sec. 2504; L. '81, p. 206, Sec. 2; R. S. '08, Sec. 4709.]

324. Reports not printed until approved by governor. SECTION 52. No annual or biennial report of any officer, board, commission, commissioner, board of regents or board of trustees, shall hereafter be printed at the expense of the state until the governor has designated in writing on such report how much thereof shall be printed and how many copies thereof shall be printed. [L. '15, p. 364, Sec. 1.]

325. Boards of control of state institutions entitled only to actual expenses. SECTION 53. Members of boards of control, trustees or commissioners of all institutions supported by or under the patronage and control of the state, shall receive as compensation for their services only actual expenses incurred in attendance upon and in going to and returning from each regular and special meeting of said boards of control, trustees or commissioners, or for performing any services whatever for the institution of which they are members of the board of control, trustees or commissioners, payment to be made out of the funds appropriated for the support and maintenance of the respective institutions; *Provided*, That in all cases of cash paid out by the said members of boards of control, trustees or commissioners, an itemized account, accompanied by the proper vouchers therefor, signed by the party to whom such money has been paid, shall accompany the vouchers upon which all warrants for such expenditures shall issue. [L. '07, p. 588, Sec. 1; R. S. '08, Sec. 6119.]

326. Purpose of act. SECTION 54. The purpose of this act is to provide for the payment of actual expenses only, in lieu of stated salaries and mileage, to all members of boards of control of state institutions, and, in conformity therewith, all acts or parts of acts in conflict herewith are hereby repealed. [L. '07, p. 588, Sec. 2; R. S. '08, Sec. 6120.]

327. Debts in excess of appropriation not to be contracted—Emergencies. SECTION 55. The various officers designated by law to control and direct the fiscal affairs of the several state institutions, shall not, within any year, contract any indebtedness in excess of the amount named in any ap-

propriation made for the support of any state institution during that time; *Provided*, That in cases of emergency, the governor may authorize the contraction of such indebtedness as in his judgment shall be absolutely necessary for the maintenance and support of the institution, until such time as the general assembly shall meet. The officers of any state institution, supported by the levy of any special tax, shall contract no indebtedness in any year in excess of 80 per centum of the gross amount of levy made for that year, from which to support that institution. [L. '87, p. 411, Sec. 1; R. S. '08, Sec. 6121.]

339. Regents control university funds—Constitutionality of act. SECTION 67. Nothing in this act shall be construed to deprive the regents of the university of Colorado of the exclusive control and direction of all funds and appropriations to the university, and this act is intended only to provide for the safe custody and proper preservation of the said funds. The unconstitutionality of any provision or provisions of this act as applied to any fund or funds, or to any officer, department or institution, shall be construed to render inoperative only the provisions as applied to such funds, officers, department or institution, and the unconstitutionality of any single provision or provisions herein shall not render the other provisions inoperative, the various requirements being declared separable. [L. '13, p. 582, Sec. 5.]

428. Annual inventory of state property—Publication. SECTION 40. It shall be the duty of each and every state officer, the head of each department, and the head of each state institution to make an inventory of all property of every kind and the value thereof, in their possession or under their control or supervision, belonging to the state of Colorado, within thirty days after the passage of this act, and annually thereafter, and to submit a detailed and itemized report on the results of such inventory to the state auditor within sixty days after the passage of this act, and on or before the thirty-first day of December, of each year thereafter. The state auditor shall include and publish the aforesaid reports in his regular biennial report to the governor. [L. '15, p. 443, Sec. 1.]

428.1. Present insurance not to be renewed—Emergency insurance—Conditions for issuance of insurance. No board bureau, commission, president, superintendent, or other state officer or state agency shall hereafter place any fire insurance upon any state building or contents. All fire insurance in force and paid for upon the passage of this act shall be allowed to run to the date of its expiration, but shall not be renewed; provided, however, that at any time when the moneys in the fire loss fund created by section 2 hereof shall be less than the maximum amount of two hundred thousand dollars (\$200,000)

the governing board, officer or agency in control of any state institution shall have the power, in its discretion to cause insurance to be placed upon any state building or its contents, or both thereof, when in the opinion of such governing board, officer or agency, such building or contents, are subject to such hazards that sound business judgment requires the immediate placing of insurance thereon. Such insurance to be in such amount and for such term of years as deemed expedient by said governing board officer or agency, and the cost of placing said insurance shall be charged against any appropriation available for the support and maintenance of the department or institution in control of said building or contents; but in no event shall such insurance or any part thereof be placed with or written or furnished by any insurance company, association or society, any agent, sub-agent, solicitor, broker, salesman, officer or director of which is the officer in control, or a member of the governing board or body in control of the state institution placing said insurance. [L. '27, p. 656, Sec. 1, amending L. '25, p. 487, Sec. 1; C-M.A.S. Sec. 3606a2.

428.2. Appropriation—Limit of fund. There is hereby appropriated out of the general fund of the state, beginning with the fiscal year 1926, the sum of forty thousand dollars (\$40,000) annually, the same to be placed by the treasurer of the state in a fund to be known as the "fire loss fund"; provided, that at no time shall moneys be appropriated under this act that shall cause this said fire loss fund to exceed the sum of three hundred thousand dollars (\$300,000). The state treasurer shall, from time to time invest this fund in government or state bonds or state warrants of the State of Colorado, so that the same may be readily available to meet the provisions of this act; and interest accruing therefrom shall be added to this fund. From this fund the state auditing board may, in its discretion in case of loss by fire of any state property, draw an amount for repairs or reconstruction, which amount shall be drawn by voucher to be signed by all members of the auditing board, and shall not exceed the board's estimate of the loss sustained. [L. '27, p. 657, Sec. 2; C-M.A.S. Sec. 3606b2.

JUDICIAL DECISIONS

Location of the Institution. The location of the University of Colorado, and of the other state educational institutions enumerated in Article 8, Section 5 of the constitution of Colorado, can not be changed except by constitutional amendment. *In re Senate Resolution Relating to State Institutions*, 9 Colo. 626, 21 Pac. 472 (1886). The board of regents can not

authorize the faculty of the medical department to conduct their lectures at Denver, though providing that appropriations for that department shall not be increased, and that all graduating exercises shall be held, the business office kept, and the first year's instruction of the department be given at Boulder. *People ex rel. Jerome v. Regents of University of Colorado*, 24 Colo. 175, 49 Pac. 286 (1897).

Note: The regents of the university were authorized to conduct all or any part of the Departments of Medicine, Dentistry, and Pharmacy at Denver, whenever in their judgment the needs of the institution might demand such action, by an Amendment to the Constitution adopted November 7, 1922 and effective December 21, 1922. The text of this amendment is reproduced under "Constitutional Provisions" *supra*.

Tax Exemption: Inheritance Taxes. The University of Colorado is impliedly exempt from taxation, and this exemption extends to inheritance taxes on property received by will. *In re Macky's Estate*, 46 Colo. 79, 102 Pac. 1075, 23 L.R.A.N.S. 1207 (1909).

Interpretation of Bequest to University. A testator bequeathed \$50,000 for the erection and maintenance of a home for poor widows and orphans, but upon a condition precedent which proved impossible in law to be performed. The testator had stipulated that if this bequest should fail of execution, the \$50,000 was to revert to the estate and be divided among certain named legatees. In the same will he named the University of Colorado as a final residuary legatee. The court held that as residuary legatee, the university had no rights in the bequest of \$50,000 which the will stipulated should be divided among other named legatees. *University of Colorado v. Wilson*, 54 Colo. 510, 131 Pac. 422 (1913).

Note: The question of the distribution of the same estate was also involved in *In re Macky's Estate*, 46 Colo. 79, 102 Pac. 1075, 23 L.R.A.N.S. 1207 (1909); *Oles v. Wilson*, 57 Colo. 246, 141 Pac. 489 (1914); *Oles v. Macky's Estate*, 58 Colo. 295, 144 Pac. 891 (1914).

COLUMBIA UNIVERSITY

NEW YORK, NEW YORK

A privately controlled non-sectarian university, co-educational except in certain schools. Established in 1754 as King's College. In 1784 the legislature of New York enacted a law vesting the property of King's College in the corporation known as the Regents of the University of the State of New York, and changing the name of the college to Columbia College. In 1787 this act was repealed and superseded by a new act which confirmed the Royal Charter of 1754 and vested the property and franchises of King's College in "The Trustees of Columbia College in the City of New York." In 1810 the charter was amended and re-enacted at the request of the trustees, but the corporate title remained the same until 1912 when by order of the Supreme Court of New York it was changed to "The Trustees of Columbia University in the City of New York." The university is composed of the following colleges and schools: Columbia College, Barnard College, the Graduate Faculties of Political Science, Philosophy, and Pure Science, the School of Engineering, the Schools of Law, Medicine, Architecture, Journalism, Library Service, Business, Dentistry, the College of Pharmacy, Teachers College, University Extension and Home Study, Summer Session, Seth Low Jr. College, and St. Stephen's College. The total financial resources in 1930 exceeded \$137,720,000, and the annual income from all sources was \$17,185,000.

CHARTER AND LAWS RELATING TO COLUMBIA UNIVERSITY

HISTORICAL SKETCH¹

On October thirty-first, seventeen hundred and fifty-four, in the twenty-eighth year of the reign of George the Second, a royal charter was granted by Letters Patent to the Governors of the College of the Province of New York, in the City of New York, in America, creating them a Body Corporate to erect and maintain a college to be known as King's College for the Instruction and Education of Youth in the Learned Languages and Liberal Arts and Sciences; with power to elect their successors, to hold property, to appoint a president, fellows, professors and tutors, and to confer degrees.

This charter remained in force until May 1, 1784, when the Legislature at its first session after the adoption of the Constitution of the State of New York, passed an act entitled "An Act for granting certain privileges to the college heretofore called King's College, for altering the name and charter thereof, and erecting an university within this state."

By the terms of this act the franchises and property of the Governors of King's College were vested in a corporation styled the Regents of the University of the State of New York, who were thereby empowered to appoint a president and professors and to make ordinances for the government of King's College, the name of which was changed to Columbia College, and of such other colleges as they should found, composing the University.

This act was repealed by "An Act to institute an university within this state and for other purposes therein mentioned," which was passed April 13, 1787, largely through the efforts of Alexander Hamilton, then a member of the Legislature, and a Regent of the University. By the terms of the repealing act the original charter granted to the Governors of King's College was amended, ratified and confirmed, and the franchises and property formerly enjoyed by the Governors of King's College were vested in the Trustees of Columbia College in the City of New York, who were named in the act and declared and constituted trustees of Columbia College, in perpetual succession, according to the true intent and meaning of said charter.

On March 23, 1810, the original charter was further amended by the following act:

¹From a pamphlet entitled, *Charters and Statutes*, p. 5. Published by Columbia University, 1922.

CHARTER OF 1810²

An Act Relative to Columbia College in the
City of New York

[Laws of 1810—Chapter 85.]

WHEREAS the trustees of Columbia College, in the city of New York, have represented, that sundry impediments to their trust, and to the interest of literature in the college, are found by experience from certain restrictions and defects in their charter, and have prayed relief, and that their charter, when amended, may be comprised in one act: Therefore,

I. BE *it enacted by the people of the State of New York, represented in Senate and Assembly*, That John H. Livingston, Richard Varick, Brockholst Livingston, Abraham Beach, John Lawrence, Gershom Seixas, Richard Harison, John Watts, William Moore, Cornelius I. Bogart, John M. Mason, Edward Dunscomb, George C. Anthon, John N. Abeel, James Tillary, John H. Hobart, Benjamin Moore, Egbert Benson, Gouverneur Morris, Jacob Radcliff, Rufus King, Samuel Miller, Oliver Wolcott, and John B. Romeyn, the present trustees of the said college, and their successors, shall be and remain forever hereafter, a body politic and corporate, in fact and in name, by the name of "The trustees of Columbia College, in the city of New York," and by that name shall and may have continual succession forever hereafter, and shall be able in law to sue and be sued, implead and be impleaded, answer and be answered unto, defend and be defended, in all courts and places whatsoever, and may have a common seal, and may change and alter the same at their pleasure, and also, shall be able in law to take by purchase, gift, grant, devise, or in any other manner, and to hold any real and personal estate whatsoever; *Provided always*, The clear yearly value of the real estate to be so acquired, shall not exceed the sum of twenty thousand dollars;³ and also that they and their successors shall have power to give, grant, bargain, sell, devise, or otherwise dispose of, all or any part of the said real and personal estate, as to them shall seem best for the interest of the said college.

II. *And be it further enacted*, That the said trustees, and their successors, shall forever hereafter have full power and authority to direct and prescribe the course of study, and the discipline to be observed in the said college, and also to select and appoint by ballot or otherwise, a president of the said college, who shall hold his office during good behaviour; and such professor or professors, tutor or tutors, to assist the president in the government and education of the students belonging to the said college,

²*Ibid.* pp. 6-8.

³This limitation was repealed by Chapter 65 of the Laws of 1884.

and such other officer or officers, as to the said trustees shall seem meet, all of whom shall hold their offices during the pleasure of the trustees; *Provided always*, That no such professor, tutor, or other assistant officer shall be trustee.

III. *And be it further enacted*, That if complaint shall be made in writing to the said trustees, or their successors, by any member of the said corporation of any misbehaviour in office by the president, it shall be lawful for the said trustees, or their successors, from time to time, upon examination, and such due proof of misbehaviour, to suspend or discharge such president, and to appoint another in his place.

IV. *And be it further enacted*, That eleven of the said trustees, lawfully convened, as is hereinafter directed, shall be a quorum for the despatch of all business, except for the disposal of real estate, or for the choice or removal of a president, for either of which purposes there shall be a meeting of at least thirteen trustees.

V. *And be it further enacted*, That the said trustees shall have full power and authority to elect by ballot their own chairman once in every year, or at such other periods as they shall prefer.

VI. *And be it further enacted*, That the said trustees shall also have power, by a majority of votes of the members present, to elect and appoint, upon the death, removal out of the state, or other vacancy of the place or places of any trustee or trustees, other or others in his or their places or stead as often as such vacancy shall happen; and also to make and declare vacant the seat of any trustee who shall absent himself from five successive meetings of the board; and also to meet upon their own adjournment, and so often as they shall be summoned by their chairman, or in his absence by the senior trustee; whose seniority shall be accounted according to the order in which the said trustees are named in this act, and shall be elected hereafter; *Provided always*, That the said chairman or senior trustee shall not summon a meeting of the corporation unless required thereto in writing by three of the members; *And provided also*, That he cause notice of the time and place of the said meeting to be given in one or more of the public newspapers printed in the City of New York, at least three days before such meeting; and that every member of the corporation resident in the City shall be previously advertised in writing of the time and place of every such meeting.

VII. *And be it further enacted*, That the said trustees and their successors, shall have power and authority to grant all such literary honours and degrees, as are usually granted by any university, college, or seminary of learning in this state, or in the United States; and in testimony of such grant to give suitable diplomas under their seal, and the signatures of the presi-

dent and such professors, or tutors of the college, as they shall judge expedient; which diplomas shall entitle the possessors respectively to all the immunities and privileges which either by usage or statute are allowed to possessors of similar diplomas from any university, college, or seminary of learning.

VIII. *And be it further enacted*, That the said trustees, and their successors, shall have full power and authority to make all ordinances and by-laws which to them shall seem expedient for carrying into effect the designs of their institution; *Provided always*, That such ordinances or by-laws shall not make the religious tenets of any person a condition of admission to any privilege or office in the said college, nor be inconsistent with the constitution and laws of this state, nor with the constitution and laws of the United States.

IX. *And be it further enacted*, That all the real and personal estate whatsoever and wheresoever, which were formerly vested in the governors of the college of the province of New York in the city of New York in America, or in the trustees of Columbia College in the city of New York, be and the same is hereby confirmed to and vested in the said trustees of Columbia College in the city of New York, and their successors forever, for the sole use and benefit of the said college; and that it shall and may be lawful to and for the said trustees, and their successors, to grant, bargain, sell, demise, improve and dispose of the same as to them shall seem meet; *Provided always*, That the lands given and granted to the governors of the college of the province of New York in the city of New York in America by the corporation heretofore styled "The Rector and Inhabitants of the city of New York, in communion of the Church of England, as by law established," on part whereof the said college is erected, shall not be granted for any greater term of time than sixty-three years.⁴

X. *And be it further enacted*, That the eighth, ninth, tenth, and eleventh sections of the act, entitled, "an act to institute an university within this state, and for other purposes therein mentioned," passed the thirteenth day of April, in the year of our Lord one thousand seven hundred and eighty-seven, be and the same are hereby repealed.

PROVISIONS OF THE EARLIER CHARTERS AND ACTS IN REGARD TO TRUSTEES⁵

1. Charter of 1754: This Charter provided for a Board of Governors, the corporate title of which was "Governors of the

⁴Amended by Chapter 310 of the Laws of 1852 to permit grants free from restrictions with the consent of the grantors.

⁵Data obtained from a monograph entitled, *Charters, Acts and Official Documents*, compiled by John B. Pine, Clerk of the Trustees. Published by the University, June, 1895.

College of the Province of New York, in the City of New York, in America." This Board was composed of more than fifteen *ex officio* members (fifteen designated officials and the Judges of the Supreme Court) and twenty-four other persons named in the Charter. Two members, the Lord Archbishop of Canterbury and the first Lord Commissioner of Trade and Plantations, were authorized to appoint proxies to serve in their place. Fifteen members were made a quorum and any five members could call a meeting of the Board. The members were to serve for life or until removed for cause and the Board was self-perpetuating. The regular annual meeting was directed to take place the second Tuesday in May. It was required that the President of the College (King's College) be a member of the Anglican Church.

2. An *Additional Charter* of 1755 provided for the appointment of a Professor of Divinity, by the Minister, Elders and Deacons of the Reformed Protestant Dutch Church in the City of New York. It was provided that the Professor of Divinity could be removed, for cause, by the Governors of the College.

3. An Act of 1784 (*Laws of New York*, 1784, Chapter 51) vested the control of the College in the Regents of the University of the State of New York and provided that King's College and other colleges together constitute the University of the State of New York. The Board of Regents consisted of twenty-four members in addition to the Governor, Lieutenant Governor, President of the Senate, Speaker of the Assembly, Mayor of the City of New York, Mayor of the City of Albany, Attorney General and the Secretary of State, as members, *ex officio*. In addition to these one regent was to be appointed by the clergy of the respective religious denominations in the State, in convention assembled. The Governor, by and with the advice and consent of the Council of Appointment, was to fill vacancies with appointees residing in the counties in which their predecessors resided. A majority of this Board of Regents was made a quorum. Professors and tutors of the respective colleges were made members of the Board of Regents with the right to vote on matters concerning the College which they respectively served and which did not concern them personally. The Act of 1784 changed the name to Columbia College.

4. An Act of 1785 (*Laws of New York*, 1785, Chapter 15) added thirty-three additional members to the Board of Regents, some of whom were not residents of New York State.

5. A new Charter was granted in 1787 (*Laws of New York*, 1787, Chapter 82) reviving and amending the Original Charter of 1754. The corporation formed by this new Charter was styled, "The Trustees of Columbia College in the City of New York." By this Charter a Board of Trustees consisting of twenty-four

members, thirteen of whom constituted a quorum, was created. Five or more were empowered to call a meeting. The provision in the Original Charter that the President be a member of the Anglican Church was abolished.

The next change in regard to the government of Columbia College was that of the Charter of 1810.

JUDICIAL DECISIONS

Enforcement of Restrictive Covenant in Deed. Adjoining owners of land in a city may, by grant, impose mutual and corresponding restrictions upon the lands belonging to each, to secure uniformity in the structure and position of buildings upon the entire premises, or to confine their use to certain purposes, as for private residences. Where such a covenant is made, in equity the premises are charged with its observance in the hands of all subsequent grantees taking title with notice of its existence, and a court of equity will enforce a specific performance, in the absence of evidence that there has been any change in the character of the locality which has rendered it inexpedient to observe the covenant. Thus, the carrying on of business at the northeast corner of 50th Street and 6th Avenue in New York City was restrained, to enforce a covenant restricting the use of the property to residence purposes, entered into on July 25, 1859, between Columbia College and one Beers, then owner of the premises in question. *Trustees of Columbia College v. Lynch*, 70 N. Y. 440 (1877).

Restrictive Covenant in Deed. Where there has been such a change in the character of the neighborhood as to defeat the object and purposes of the agreement, and to render it inequitable to deprive the owner of the privilege of conforming his property to that character, mutual covenants restricting the use of property to residence purposes will not be enforced by a court of equity. Thus, upon the showing that the general current of business had reached and passed the premises at 50th Street and 6th Avenue in New York City, and that an elevated railroad had been built on 6th Avenue, rendering quiet and privacy impossible in the premises, it was held that a contingency not contemplated by the parties had imposed a condition frustrating the scheme devised by them and defeating the object of the covenant and making it so oppressive

and inequitable that a court of equity would not decree its enforcement. *Trustees of Columbia College v. Thacher*, 87 N. Y. 311 (1882).

History of Charters; Power to Hold Real Estate. A testator who died in 1881 devised the remainder of certain real estate in fee to Columbia College. In an action brought by his executors to determine the validity of this devise, the Court construed the provision contained in the Charter of 1810 that "the clear yearly value of the real estate to be so acquired, shall not exceed the sum of Twenty thousand dollars" and held (1) that the power of the College to take the real estate was derived from its Charter of 1810 and was not controlled by its Charter of 1754; (2) that the real estate acquired prior to 1810 and real estate thereafter acquired by special legislative grant or authority was not within the limitation imposed by the Charter of 1810; (3) that the University had power to take the devise in question. Mr. Justice Paterson, in his opinion, reviewed the charters of the University. He also stated: "In examining the legislative enactments and the grants, both Colonial and state, made to what is now Columbia University, one cannot fail to be impressed with the importance attached to that institution in the system of education in New York." *Phoenix v. Trustees of Columbia College*, 84 N. Y. S. 897, 87 App. Div. 438, affirmed on opinion of Patterson, J., below, 72 N. E. 1149, 179 N. Y. 592 (1903).

Note: The limitation imposed upon the power of the university to hold real estate imposed by the Charter of 1810, was repealed in 1884.

Exclusion of Student. Refusal of Columbia University to permit one to continue as a student because he made a public, reported speech, outside the university, declaring his opinion that there would be a draft revolution during the war, was held justified on the ground that he was "morally unfit" by reason of conduct interfering with and injuring the university, lessening its control over its students, and impairing its influence upon the students and the community. *Samson v. Trustees of Columbia University*, 167 N. Y. S. 202, 101 Misc. Rep. 146, order affirmed *Same v. Trustees of Columbia University*, 167 N. Y. S. 1125, 181 App. Div. 936 (1917).

Protection of Corporate Name. In granting to Columbia University an injunction against the use of the name "Columbia Educational Institute" by the defendant, the court said: "The conclusion is irresistible that defendants in adopting the name 'Columbia Educational Institute' did so with the deliberate design of conveying to the public the impression that they were identical or associate with the plaintiff. The right of plaintiff to its name 'Columbia University' was expressly conferred by the Legislature in 1784 and has been in constant use since that time. It has built up a great name and standing among the educational institutions of the country, which name can not be appropriated by the device resorted to by the defendant." *Trustees of Columbia University v. Axenfeld*, 241 N. Y. S. 4, 136 Misc. Rep. 831 (1930).

Survival of University's Option Under Lease. Columbia University is lessor of certain properties under long-term leases which contain a provision giving it the option at the end of the first twenty-one year term, either to pay for the building constructed by the tenant on the leasehold, or to grant the tenant a lease for a second twenty-one year term. It is held that this option continues after the end of the first term and until duly appointed appraisers shall have first determined the reasonable value of the building and the reasonable amount of new rent. *Trustees of Columbia University v. Kalvin*, 250 N. Y. 469 (1929), reversing 225 App. Div. 653 and 226 App. Div. 775, reported in 132 Misc. 601 and 133 Misc. 270 (1928).

CORNELL UNIVERSITY

ITHACA, NEW YORK

A privately controlled, non-sectarian, co-educational university incorporated in 1865. It is the beneficiary of New York's portion of the lands granted to the states by Congress under the terms of the Morrill Act of 1862, and receives annual state appropriations for the maintenance of the College of Agriculture, the College of Home Economics, and the Veterinary College. The principal source of income of the university is the "Cornell Endowment Fund" which has been developed from gifts to the university by Ezra Cornell. The university comprises the College of Arts and Sciences, the College of Engineering, and the following additional units, established in the years indicated: the College of Architecture (1871), the Law School (1887), the Graduate School (1909), and the Medical College (1898). The state has maintained the Veterinary College since 1894, the College of Agriculture since 1904, and incorporated the College of Home Economics in 1925. In 1923 the state gave the university control of the Agricultural Experiment Station at Geneva. The total productive funds of the university in 1930 exceeded \$24,000,000, and the income available from all sources, including appropriations from the State of New York, for the fiscal year was more than \$9,650,000.

LAWS RELATING TO CORNELL UNIVERSITY¹

CHARTER OF CORNELL UNIVERSITY

Chapter 16 of Consolidated Laws (Education Law) Article 40

SECTION 1030 Cornell university continued

1031 Trustees; election of trustees

1032 Extent of farm and grounds; special constables

1033 Object and powers of the corporation

1034 Extent to which property may be held

1035 Trustees shall make reports; university subject to visitation of regents

1036 Restrictions on alienation of property

1037 State scholarships at Cornell university

1038 New York state veterinary college

1039 New York state college of agriculture

1039-a New York state agricultural experiment station

1039-b New York state college of home economics

SECTION 1030. Cornell university continued. The corporation known as Cornell University, located at Ithaca, is continued with all the rights, and subject to all the liabilities contained in the act of incorporation, being laws of eighteen hundred and sixty-five, chapter five hundred and eighty-five, as amended.²

SECTION 1031. Trustees; election of trustees. 1. The board of trustees of said Cornell University shall hereafter be made up and constituted as follows: the governor, the lieutenant-governor, the speaker of the house of assembly, the commissioner of education, the president of the state agricultural society, the commissioner of agriculture, the librarian of the Cornell library, and the president of the said university shall be trustees thereof *ex officio*; and the eldest lineal male descendant of Ezra Cornell shall be a trustee thereof during his life. To fill the vacancies in the board existing among the elective trustees prior to this enactment, the governor shall appoint five trustees subject to

¹From a pamphlet entitled, *Laws Relating to Cornell University*, pp. 3-11. Published for the University, January, 1929.

²The original act of incorporation provided for a board of seventeen members exclusive of *ex officio* members. The *ex officio* members were the governor, lieutenant governor, speaker of the assembly, superintendent of public instruction, president of the state agricultural society, librarian of the Cornell Library and the eldest male descendant of Ezra Cornell. In addition to the *ex officio* members, ten members were named in the original act, who, together with the *ex officio* members, were directed to elect seven more to make up a board of seventeen, exclusive of the *ex officio* members. It was further specified that "at no time shall a majority of the board be of any one religious sect, or of no religious sect." *Laws of New York*, 1865, pp. 1188-94.

confirmation by the senate, one of whom shall be appointed to serve for one year, one for two years, one for three years, one for four years, and one for five years, the term of office of each of whom shall commence at the beginning of the commencement week next succeeding his appointment. Prior to the expiration of the term of office of the trustee appointed for one year as above provided and annually thereafter, the governor shall appoint, subject to confirmation by the senate, one trustee for the term of five years, whose term of office shall begin at the expiration of the term of the retiring trustee. In the event of a vacancy occurring among the trustees appointed by the governor, by death or otherwise, the governor, subject to confirmation by the senate, as provided aforesaid, shall appoint a trustee to fill the vacancy for the unexpired term. There shall also be twenty-six elective trustees, fifteen of whom shall be elected by the board of trustees, and ten by the alumni of said university, and one each year by the executive committee of the New York State Grange to be elected at the time of the annual meeting of said grange, such trustee so elected to be elected for a term of one year, his term of office to commence at the beginning of the first commencement week subsequent to his election; but at no time shall a majority of the board be of any one religious sect or of no religious sect.

2. The board of trustees shall elect each year three trustees, and as many more as may be necessary to fill vacancies, among members elected by them caused by resignation or death. The alumni of said university shall meet annually in Ithaca, on the day within the seven days before commencement, designated by the directors of the Associate Alumni of Cornell University at their regular preceding November meeting. In case the directors at such meeting fail to designate a day, the meeting shall be had upon the same day prior to commencement as that on which it was held in the preceding year. At the meeting of the alumni at each annual commencement said alumni shall elect two trustees, and as many more as may be necessary to fill vacancies arising from resignations or deaths among the number previously elected by them. Except as herein otherwise provided the term of office of each elective trustee shall be five years from the annual commencement at which he is elected; but if elected by the board of trustees at a meeting thereof during the academic year, his term shall then be five years from the commencement immediately preceding his election; but every trustee shall hold over until his successor is elected or appointed as above provided.

3. The election of trustees by the board shall be by ballot, and fifteen ballots shall concur before anyone is elected; and twelve shall constitute a quorum for the transaction of business.

Who shall be alumni of said university shall be prescribed by its board of trustees. The election of trustees by the alumni shall be by ballot, and shall be conducted in the following manner and under the following provisions: A register of the signature and address of each of the said alumni of the said university shall be kept by the treasurer of the said university at his business office. Any ten or more alumni may file with the treasurer, on or before the first day of April in each year, written nominations of the trustees to be elected by the alumni at the next commencement. Forthwith after such first day of April a list of such candidates shall be mailed by said treasurer to each of the alumni at his address. Such list shall state the vacancies, if any, then existing in the alumni membership of the board of trustees; and the vacancies that will occur by expiration of term at the next ensuing commencement. Each alumnus may vote by transmitted ballot for trustees to be elected by the alumni at any commencement, in accordance with such regulations as to the method and time of voting as may be prescribed by the alumni and approved by the trustees of the university or its executive committee. The candidates to the extent of the number of places to be filled, having the highest number of votes upon the first ballot shall be declared elected, provided that each of said candidates has received the votes of at least one-third of all the alumni voting at said election. Of the alumni trustees thus elected, the two receiving the highest number of votes shall fill the vacancies occurring by expiration of term; the others thus elected shall be allotted to fill vacancies, if any, existing otherwise than by expiration of term; the order of allotment to be in the order of the number of votes cast, the candidate receiving the highest number of votes to be allotted the longer unexpired term; but if there shall be a failure to fill all or one or more of the vacancies, caused by expiration of term or otherwise, by reason of the fact that one or more candidates having the highest number of votes as above fail to receive the votes of at least one-third of the alumni voting, then and in that event such vacancies shall be filled by the alumni personally present at said meeting, the election being limited to candidates not elected on the first ballot, if there is a sufficient number thereof, having the highest pluralities, not exceeding two candidates for each place thus to be filled. If any vacancy occur in the alumni membership of the board of trustees, between the last day fixed herein for the filing of nominations with the university treasurer and the time of the annual meeting of the alumni, herein provided for, then such vacancy shall not be filled for the unexpired term until the next following year, and shall then be filled by nomination and election in the manner hereinbefore prescribed for the election of alumni trustees.

SECTION 1032. Extent of farm and grounds: special constables. The farm and grounds occupied by said corporation, whereupon its buildings are erected, or shall be erected in such manner and to such extent as the trustees may from time to time direct and provide for, shall consist of not less than two hundred acres. For the protection of the grounds, farm buildings and property of the university, the supervisor of the town of Ithaca may appoint, upon the recommendation of the board of trustees of said Cornell university, not more than three suitable persons, as special constables, who shall have and exercise within the boundaries of such university grounds, the powers and duties of constables of towns, and whose compensation shall be regulated and paid by said board of trustees of the university.

SECTION 1033. Objects and powers of the corporation. The leading object of said corporation shall be to teach such branches of learning as are related to agriculture and the mechanic arts, including military tactics, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life. But such other branches of science and knowledge may be embraced in the plan of instruction and investigation pertaining to the university as the trustees may deem useful and proper. Said university is authorized to establish faculties, departments and branches and carry on its work at any places in this state and to confer any and all literary, scientific, technical and professional degrees, and in testimony thereof award certificates and diplomas. Persons of every religious denomination, or of no religious denomination, shall be equally eligible to all offices and appointments.

SECTION 1034. Extent to which property may be held. The said corporation may take and hold real and personal property to such an amount as may be or become necessary for the proper conduct and support of the several departments of education heretofore established or hereafter to be established by its board of trustees, and such property real and personal as has been, or may hereafter be given to said corporation by gift, grant, devise or bequest in trust or otherwise, for the use and purposes permitted by its charter, and in cases of trusts so created, the several trust estates shall be kept distinct, and the interest or income shall be faithfully applied to the purposes of such trust, in accordance with the provisions of the act or instrument by which the respective trusts were created.

SECTION 1035. Trustees shall make reports; university subject to visitation of regents. The trustees of said university shall make all the reports and perform such other acts as may be necessary to conform to the act of congress, entitled "An act donating public lands to the several states and terri-

tories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July second, eighteen hundred and sixty-two. The said university shall be subject to visitation of the regents of the university of the state of New York.

SECTION 1036. Restrictions on alienation of property. The said university grounds, farm, work-shops, fixtures, machinery, apparatus, cabinets and library, shall not be incumbered, aliened or otherwise disposed of by the said trustees, or by any other person, except on terms such as the legislature of the state of New York shall have approved, and any act of the said trustees, or that of any other person which shall have that effect, shall be void.

SECTION 1037. State scholarships in Cornell university. The several colleges and departments of instruction in Cornell university shall be open to applicants for admission thereto at the lowest rates of expense consistent with its welfare and efficiency, and without distinction as to rank, class, previous occupation or locality. That its advantages may be equalized to all parts of the state, the institution shall receive students to the number of one each year from each assembly district in this state, to be selected as hereinafter provided, and shall give them instruction in any or in all the prescribed branches of study in any college or department of said institution, charging each of them in each academic year a tuition fee of one hundred dollars instead of the regular tuition fees established from time to time by the said university for the various colleges and departments, said one hundred dollars to be paid in equal instalments at the time when the regularly established tuition payments of each academic year are due and payable. The said reduction in tuition so provided shall be accorded to said students in consideration of their superior ability, and as a reward for superior scholarship in the academies and public schools of this state. Said students shall be selected as the legislature may from time to time direct, and until otherwise ordered as follows:

1. A competitive examination, under the direction of the education department, shall be held at the county court-house in each county of the state, upon the first Saturday in June, in each year, by the city superintendents and the school commissioners of the county.

2. None but pupils who will be at least sixteen years of age at the beginning of a college year next after the date of examination, and of six months' standing in the common schools or academies of the state, during the year immediately preceding the examination, shall be eligible. A pupil who has been in the military or naval service of the United States during the year immediately preceding such examination shall be permitted to enter the same although not in attendance upon instruction in

the common schools or academies of the state for the required period of six months.

3. Such examination shall be upon subjects designated by the president of the university and upon question papers prepared under the direction of the commissioner of education.

4. The city superintendents and school commissioners of each county shall immediately after the close of the examination forward to the commissioner of education all answer papers submitted by candidates in such examination, all statements of candidates and a report of the names of candidates in such form as the commissioner of education shall require.

5. In case any candidate who may become entitled to a scholarship shall fail to claim the same, or shall fail to pass the entrance examinations at such university, or shall die, resign, absent himself without leave, be expelled or, for any other reason, shall abandon his right to or vacate such scholarship either before or after entering thereupon, then the candidate certified to be next entitled in the same county shall become entitled to the same. In case any scholarship belonging to any county shall not be claimed by any candidate resident in that county, the commissioner of education may fill the same by appointing thereto some candidate first entitled to a vacancy in some other county. In any such case, the president of the university shall at once notify the commissioner of education and that officer shall immediately notify the candidate next entitled to the vacant scholarship of his right to the same.

6. Any state student who shall make it appear to the satisfaction of the president of the university that he requires leave of absence, for the purpose of earning funds with which to defray his living expenses while in attendance, may, in the discretion of the president, be granted such leave of absence, and may be allowed a period not exceeding six years from the commencement thereof for the completion of his course at said university.

7. In certifying the qualifications of the candidates, preference shall be given, where other qualifications are equal, to the children of those who have died in the military or naval service of the United States.

8. Notices of the time and place of the examinations shall be given in all the schools having pupils eligible thereto, prior to the first day of January in each year, and shall be published once a week, for three weeks, in at least two newspapers in each county immediately prior to the holding of such examinations. The cost of publishing such notices and the necessary expenses of such examination shall be a charge upon each county, respectively, and shall be audited and paid by the board of supervisors thereof.

9. The commissioner of education shall attend to the giving and publishing of the notices hereinbefore provided for. He may, in his discretion, direct that the examination in any county may be held at some other time and place than that above specified, in which case it shall be held as directed by him. He shall keep full records in his department of all candidates attending such examinations and shall notify candidates of their rights under this chapter. He shall determine any controversies which may arise under the provisions of this chapter. He is hereby charged with the general supervision and direction of all matters in connection with the filling of such scholarships. Students enjoying the privileges of free scholarships shall, in common with the other students of said university, be subject to all the examinations, rules and requirements of the board of trustees or faculty of said university, except as herein provided.

SECTION 1038. New York State Veterinary College. 1. The state veterinary college, established by chapter one hundred and fifty-three of the laws of eighteen hundred and ninety-four, shall continue to be known as the New York state veterinary college and shall continue to be under the supervision of the education department. The object of said veterinary college shall be: To conduct investigations as to the nature, prevention and cure of all diseases of animals, including such as are communicable to man and such as cause epizootics among live stock; to investigate the economical questions which will contribute to the more profitable breeding, rearing and utilization of animals; to produce reliable standard preparations of toxins, antitoxins and other products to be used in the diagnosis, prevention and cure of diseases and in the conducting of sanitary work by approved modern methods; and to give instruction in the normal structure and function of the animal body, in the pathology, prevention and treatment of animal diseases, and in all matters pertaining to sanitary science as applied to live stock and correlative to the human family.

2. All buildings, furniture, apparatus and other property heretofore or hereafter erected or furnished by the state for such veterinary college shall be and remain the property of the state. The Cornell university shall have the custody and control of said property, and, as the representative of the education department, shall, with whatever state moneys may be received for the purpose, administer the said veterinary college as to the establishment of courses of study, the creation of departments and positions, the determination of the number and salaries of members of the faculty and other employees thereof, the appointment and employment thereof, the maintenance of discipline and as to all matters pertaining to its educational policies, activities and operations, including research work.

3. The education department shall maintain general supervision over the requests for appropriations, budgets, estimates and expenditures of such college. Such university shall receive no income, profit or compensation for the exercise and performance of the powers and duties conferred and imposed by this section, but all moneys received from state appropriations for the said veterinary college or derived from other sources in the course of the administration thereof, shall be kept by said university in a separate fund from the moneys of the university, and shall be used exclusively for said New York state veterinary college. Such moneys as may be appropriated to be paid to the Cornell university by the state in any year, to be expended by said university in the administration of said veterinary college, shall be payable to the treasurer of Cornell university in three equal payments to be made on the first day of October, the first day of January, and the first day of April in such year, and shall be expended upon vouchers approved by the commissioner of education, as the chief administrative officer of the education department, when and in the manner authorized by the regents of the university.

4. The said university shall expend such moneys and use such property of the state in administering said veterinary college, and shall report to the education department during the month of September in each year, a detailed statement of such expenditures and of the general operations of the said veterinary college.

5. No tuition fee shall be required of a student pursuing the regular veterinary course, who for a year or more immediately preceding his admission to said veterinary college shall have been a resident of this state. The tuition fees charged to other students and all other fees and charges in said veterinary college shall be fixed by Cornell University, and the moneys so received shall be expended for the current expenses of the said veterinary college.

SECTION 1039. New York state college of agriculture.

1. The state college of agriculture, established by chapter six hundred and fifty-five of the laws of nineteen hundred and four, shall continue to be known as the New York state college of agriculture at Cornell university and shall continue to be under the supervision of the education department. The object of said college of agriculture shall be to improve the agricultural methods of the state, to develop the agricultural resources of the state in the production of crops of all kinds, in the rearing and breeding of livestock, in the manufacture of dairy and other products, in determining better methods of handling and marketing such products, and in other ways; and to increase intelligence and elevate the standards of living in the rural districts.

For the attainment of these objects the college is authorized to give instruction in the sciences, arts and practices relating thereto, in such courses and in such manner as shall best serve the interests of the state; to conduct extension work in disseminating agricultural knowledge throughout the state by means of experiments and demonstrations on farms and gardens, investigations of the economic and social status of agriculture, lectures, publication of bulletins and reports, and in such other ways as may be deemed advisable in the furtherance of the aforesaid objects; to make researches in the physical, chemical, biological and other problems of agriculture, the application of such investigations to the agriculture of New York, and the publication of the results thereof.

2. All buildings, furniture, apparatus and other property heretofore or hereafter erected or furnished by the state for such college of agriculture shall be and remain the property of the state. The Cornell university shall have the custody and control of said property, and, as the representative of the education department, shall, with whatever state moneys may be received for the purpose, administer the said college of agriculture as to the establishment of courses of study, the creation of departments and positions, the determination of the number and salaries of members of the faculty and other employees thereof, the appointment and employment thereof, the maintenance of discipline and as to all other matters pertaining to its educational policies, activities and operations, including research work.

3. The education department shall maintain general supervision over the requests for appropriations, budgets, estimates and expenditures of such college. Such university shall receive no income, profit or compensation for the exercise and performance of the powers and duties conferred and imposed by this section, but all moneys received from state appropriations for the said college of agriculture or derived from other sources in the course of the administration thereof, shall be credited by said university to a separate fund, and shall be used exclusively for said New York state college of agriculture. Such moneys as may be appropriated to be paid to the Cornell university by the state in any year, to be expended by said university in the administration of said college of agriculture, shall be payable to the treasurer of Cornell university in three equal payments to be made on the first day of October, the first day of January, and the first day of April in such year, and shall be expended upon vouchers approved by the commissioner of education, as the chief administrative officer of the education department, when and in the manner authorized by the regents of the university.

4. The said university shall expend such moneys and use such

property of the state in administering said college of agriculture as above provided, and shall report to the education department during the month of September in each year, a detailed statement of such expenditures and of the general operations of the said college of agriculture.

5. Fees and charges in said college of agriculture shall be fixed by Cornell university, and the moneys received from these sources and from the sales of products shall be credited to a separate fund and shall be used for the current expenses of the said college of agriculture.

6. There shall be established in said state college of agriculture courses of instruction in the fundamentals, theory and practice of nursery work, including the propagation and growth of nursery stock, and in gardening and planting.

SECTION 1039-a. New York state agricultural experiment station. 1. The institution known as the New York agricultural experiment station, located in the city of Geneva, for the purposes of promoting agriculture in its various branches by scientific investigation and experiment, established by chapter five hundred and ninety-two of the laws of eighteen hundred and eighty, shall continue to be controlled and managed by Cornell university under the supervision of the education department. Said station shall be managed, controlled and administered by Cornell university, as the representative of the education department, in the manner and with the powers provided by section ten hundred and thirty-nine of this chapter. Said university shall have the power to appoint a director and such other scientific and expert workers and employees deemed necessary to accomplish the objects of such experiment station. In such station, said university shall, besides conducting experiments for the promotion of agricultural science, perform and report to the commissioner of agriculture and markets such analyses and other scientific work as such commissioner may request and consider to be necessary for the administration of the provisions of the agriculture and markets law. The salaries and other expenses incurred by reason of such analyses and other scientific service shall be paid from funds appropriated for such purposes.

2. Cornell university is hereby authorized and empowered to publish from time to time bulletins giving information of the results of analyses made at such station of any commodity or substance analysed thereat and may in like manner publish bulletins containing the results of such analyses heretofore made and unpublished.

3. In addition to the number of copies otherwise required by law, the commissioner of agriculture and markets may with the approval of the governor, cause to be printed by the state print-

er such number of copies of any report of such station heretofore or hereafter made as he deems sufficient to meet the public demand therefor. The expense of printing such copies shall be paid out of the appropriation for legislative printing, as provided by law. Such copies shall be delivered to such commissioner and sold by him to the public at the actual cost thereof as determined by the comptroller.

4. The Cornell university is hereby designated as the institution within this state entitled to receive the benefits of the act of congress of the United States, approved March second, eighteen hundred and eighty-seven, entitled "An act to establish agricultural experiment stations in connection with colleges established in the several states, under the provision of an act approved July second, eighteen hundred and sixty-two, and of the acts supplementary thereto." Such benefits of such act which this state is authorized thereby to apply to any college, institution or agricultural experiment station within this state are applied to Cornell university and this state consents that such appropriation, money, or benefits to or for the use of this state, or of any institution within this state, payable under or in pursuance of such act of congress, shall be paid to the treasurer of Cornell university who is the officer designated to receive the same, to be used by Cornell university in such proportion that nine-tenths thereof shall be applied to the use of the New York state college of agriculture and one-tenth thereof to the New York state agricultural experiment station at Geneva. Such moneys shall be expended as provided in such act of congress. The department of taxation and finance shall keep an account of all moneys hereafter received by it in pursuance of such act of congress in a separate fund to the credit of the Cornell university and shall pay all such moneys immediately upon receipt thereof by it to the treasurer of such university, upon the warrant of the comptroller issued upon the order of the said university.

SECTION 1039-b. New York state college of home economics. 1. The school of home economics heretofore administered and maintained in the New York state college of agriculture at Cornell university shall hereafter be known as the New York state college of home economics at Cornell university and shall continue to be under the management and control of said university, subject to the supervision of the education department.

2. The object of said college of home economics shall be the improvement of human welfare by means of education, investigation and extension teaching in the field of domestic science and art, including household and institutional economics, and allied subjects; and to that end it shall continue the activities

and functions of the previously existing school of home economics.

3. All buildings, furniture, apparatus, and other property heretofore erected or furnished by the state for the said school of home economics, and all buildings, furniture, apparatus, and other property hereafter erected or furnished by the state for said college of home economics shall be and remain the property of the state. The Cornell university shall have the custody and control of said property, and shall, as the representative of the education department, with whatever state moneys may be received for the purpose, administer the said college of home economics as to the establishment of courses of study, the creation of departments and positions, the determination of the number and salaries of members of the faculty and other employees thereof, the employment and appointment thereof, the maintenance of discipline and as to all matters pertaining to its educational policies, activities and operations, including research work.

4. The education department shall maintain general supervision over the requests for appropriations, budgets, estimates and expenditures of such college. Such university shall receive no income, profit, or compensation for the exercise and performance of the powers and duties conferred and imposed by this section, but all moneys received from state appropriations for said college of home economics or derived from other sources in the course of the administration thereof shall be credited by said university to a separate fund and shall be used exclusively for said New York state college of home economics. Such moneys as may be appropriated to be paid to the Cornell university by the state in any year to be expended by said university in the administration of said college of home economics shall be payable to the comptroller of Cornell university in three equal payments to be made on the first day of July, the first day of November, and the first day of March, and shall be expended upon vouchers approved by the commissioner of education, as the chief administrative officer of the education department, when and in the manner authorized by the regents of the university.

5. The said university shall expend such moneys and use such property of the state in administering said college of home economics as above provided, and shall report to the education department during the month of September in each year.

6. Fees and charges in said college of home economics shall be fixed by Cornell university, and the moneys received from these sources and from the sales of products shall be credited to a separate fund and shall be used for the expenses of said college of home economics in such ways as the trustees of said university may determine.

JUDICIAL DECISIONS

Free Scholarships. The term "public school" as used in Laws 1872, chapter 654, providing for the selection of the best scholar "from each academy and each public school" in the respective counties and cities of the state, as a candidate for a free scholarship at Cornell University, includes normal schools. *People ex rel. Hill v. Wicks et al.*, 1 N.Y.S.R. 604 (1886). A different decision was reached a year later, after a slight change in the statutes. Students in normal schools can not be selected for free scholarships in Cornell University under the terms of the act establishing the university (Laws 1865, chapter 585) as amended by Laws 1872, chapter 654, Laws 1886, chapter 614, and Laws 1887, chapter 291. *People ex rel. Hill v. Crissey*, 45 Hun (N.Y.) 19 (1887).

Power to Hold Property. The will of Jenny McGraw-Fiske made Cornell University the residuary legatee of a large estate. Section 5 of chapter 585 of the Laws 1865, incorporating Cornell University, provided that "the corporation hereby created may hold real and personal property not exceeding \$3,000,000 in the aggregate." The property of the university being more than it was permitted to aggregate, it could take nothing under the will of the testatrix. An act of the Legislature after the death of the testatrix, removing the limits of the power of the university to hold property, even if it waives the right of the state to forfeit the charter of the university for any violation thereof, can not affect the rights to property vested at the death of the testatrix, and before its passage. *In re McGraw*, 45 Hun 354, affirmed in (1888) 111 N.Y. 66, 19 N.E. 233, 2 L.R.A. 387. The United States Supreme Court was bound by the findings of the New York Supreme Court and Court of Appeals that the property of Cornell University exceeded \$3,000,000, and that it had no power to take or hold any more property; for the case involved no Federal question, and the judgment of the New York Court of Appeals was accordingly affirmed. *Cornell University v. Fiske*, 136 U.S. 152, 10 Sup. Ct. 775, 34 L. Ed. 427 (1890).

Income from Perpetual Fund. The Trustees of Cornell University were entitled to the income of the fund derived from the sale of public lands donated to the state by the Act of

Congress of July 2, 1862, without any deduction for expenses or for premiums paid in purchasing stocks, as required by the act of April 27, 1865, incorporating the university. When the fund does not yield an income of 5% on the amount, as intended by the act of Congress, the trustees are entitled to only such sum as is actually received as interest. *People v. Davenport*, 117 N. Y. 549, 23 N.E. 664 (1890), affirming 30 Hun 177 (1883).

Constitutionality of Act Authorizing College of Forestry. Chapter 122, page 230, New York Laws of 1898, authorizing Cornell University to establish a College of Forestry, empowering it to acquire at the expense of the state forest lands for the purpose of conducting experiments in forestry, and containing an appropriation for the purpose of carrying out these provisions, is constitutional; the appropriation being assumed not to be in aid of the university within the prohibition of Article 7, section 1 of the Constitution nor of Article 8, section 9, which declares that the credit of the state shall not be loaned to any individual, association, or corporation. *People v. Brooklyn Cooperage Company*, 100 N. Y. S. 19, 114 App. Div. 723 (1906), aff. 79 N. E. 866, 187 N. Y. 142 (1907).

Note: Cornell University established a College of Forestry, as authorized by the statute mentioned in the above case. A few years thereafter the state legislature ceased to make appropriations for the support of the College of Forestry and it was discontinued as a college, but a Department of Forestry in the College of Agriculture at Cornell University is still maintained. The State College of Forestry at Syracuse was established after the discontinuance of the College of Forestry at Cornell.

Liability for Injury to Student. Louise Hamburger, a student in the State College of Agriculture administered by Cornell University, received injuries resulting in the loss of an eye caused by an explosion in the chemistry laboratory resulting from heating a mixture of chemicals as directed by an instructor. The evidence did not conclusively fix the responsibility for the presence of the wrong chemicals in the mixture. At one stage in the litigation the injured student was awarded \$25,000 damages against the university, on the ground that it was not a corpora-

tion administering a governmental activity, such as to absolve it from liability for the negligence of its servants. Subsequently this decision was reversed and the complaint dismissed by the Appellate Division, on the ground that Cornell University is a charitable corporation, not liable for injury to a beneficiary. Judge Hasbrouck dissented in part, saying, "We may well inquire whether this rule of immunity is not archaic and medieval." The decision exempting the university from liability was finally affirmed by the Court of Appeals, the opinion being written by Judge Cardozo. *Hamburger v. Cornell University*, 99 Misc. Rep. 564, 166 N. Y. S. 46, reversed 184 App. Div. 403, 172 N. Y. S. 5, motion to appeal granted 186 App. Div. 929, 172 N. Y. S. 895, and order affirmed 226 N. Y. 625, 123 N. E. 868 (1919); reversed 204 App. Div. 664 (1923), and reversal affirmed 240 N. Y. 328 (1925).

Liability for Injuries caused by Negligently Driven Automobile. Cornell University is liable in damages to a person injured by an automobile owned by the university and negligently operated by an employee of the Extension Department of the College of Agriculture of the university. *Green v. Cornell University*, 193 App. Div. 924, 184 N.Y.S. 924, affirmed, 233 N.Y. 519, 135 N.E. 900 (1922).

A similar state of facts was involved and a similar decision reached in the case of *Breed v. Cornell University*, 198 App. Div. 966, affirmed 233 N. Y. 518 (1922).

DARTMOUTH COLLEGE

HANOVER, NEW HAMPSHIRE

A non-sectarian Liberal Arts College for men, controlled by a self-perpetuating board of trustees, originally organized primarily for the instruction of Indians, chartered by the Province of New Hampshire in 1769. In 1819 after the State of New Hampshire had attempted to amend the Charter and change the name, the Supreme Court of the United States handed down its historic decision denying the right of the State to amend the Charter without the consent of the trustees, holding that any such act would be in conflict with that clause of the Constitution of the United States which prohibits any state from passing any act impairing the obligation of a contract. Associated with Dartmouth College are three small graduate schools: Dartmouth Medical School, established in 1797; the Thayer School of Civil Engineering, established in 1867; and the Amos Tuck School of Administration and Finance, established in 1920, believed to be the first graduate school of Business Administration in the country. The endowment of the College in 1932 approximated \$16,500,000, and the total endowed income for 1931-32 was about \$1,875,000, of which nearly half was from tuition fees.

CHARTER OF DARTMOUTH COLLEGE¹

GEORGE THE THIRD by the grace of God of Great Britain France and Ireland KING Defender of the Faith, and so forth.—

To ALL to whom these Presents shall come. GREETING

[1]²

WHEREAS it hath been represented to our Trusty and well beloved JOHN WENTWORTH Esquire Governor and Commander in Chief in and over our Province of NEW HAMPSHIRE in New England in AMERICA, that the Reverend ELEAZER WHEELOCK of Lebanon in the Colony of Connecticut in New England aforesaid, now Doctor in Divinity, did on or about the year of our Lord one thousand seven hundred and Fifty four at his own expense, on his own Estate and Plantation set on foot an Indian Charity-School and for several years through the assistance of well-disposed Persons in America, clothed, maintained and educated a number of the Children of the INDIAN Natives with a view to their carrying the Gospel in their own Language and spreading the knowledge of the Great Redeemer among their Savage Tribes, and hath actually employ'd a number of them as Missionaries and Schoolmasters in the Wilderness for that purpose: and by the blessing of GOD upon the endeavours of said Wheelock the design became reputable among the Indians insomuch that a larger number desired the Education of their Children in said School, and were also disposed to receive Missionaries and Schoolmasters in the Wilderness more than could be supported by the charitable Contributions in these American Colonies.—

[2] WHEREUPON the said Eleazer Wheelock thought it expedient that endeavours should be used to raise Contributions from well disposed Persons in England for the carrying on and extending said undertaking, And for that purpose said Eleazer Wheelock requested the Reverend Nathaniel Whitaker now Doctor in Divinity to go over to England for that purpose, and

¹*Charter of Dartmouth College, Divided into Sections and Annotated.* Hanover, New Hampshire: Printed for the College by the Dartmouth Press.

²For convenience of reference, etc., the charter is here divided into sections, severally relating to a single subject and its incidents, and the sections are numbered consecutively. Some formal phrases, frequently repeated, are in italics. In these respects this copy differs from the original charter; in all other respects, including punctuation and capitalization, it is believed to be a true copy, having been carefully compared with the original document now in the custody of the Treasurer of the College.

sent over with him the Reverend Samson Occom an Indian Minister who had been educated by the said Wheelock, And to enable the said Whitaker to the more successful performance of said Work on which he was sent, said Wheelock gave him a full Power of Attorney by which said Whitaker solicited those worthy & generous Contributors to the Charity Viz^t. The Right Honorable WILLIAM Earl of DARTMOUTH, The Honorable Sir SIDNEY STAFFORD SMYTHE Knight, one of the Barons of his Majesty's Court of Exchequer, JOHN THORNTON of Clapham in the County of Surry Esquire, SAMUEL ROFFEY of Lincoln's Inn fields in the County of Middlesex Esquire, CHARLES HARDY of the parish of Saint Mary-le-bonne in said County Esquire, DANIEL WEST of Christ's church Spital-fields in the County aforesaid Esquire, SAMUEL SAVAGE of the same place Gentleman, JOSIAH ROBERTS of the parish of Saint Edmund the King Lombard Street, London Gentleman, and ROBERT KEEN of the parish of Saint Botolph Aldgate London, Gentleman, to receive the several Sums of Money which should be contributed, and to be Trustees for the Contributors to such Charity, which they cheerfully agreed to—

[3] Whereupon the said Whitaker did by virtue of said Power of Attorney constitute and appoint the said Earl of Dartmouth, Sir Sydney Stafford Smythe, John Thornton, Samuel Roffey, Charles Hardy & Daniel West Esquires, and Samuel Savage, Josiah Roberts and Robert Keen Gentlemen to be Trustees of the Money which had then been contributed, and which should by his means be contributed for said Purpose; which Trust they have accepted as by their engrossed Declaration of the same under their Hands and Seals well executed fully appears, and the same has also been ratified by a deed of Trust well executed by the said Wheelock,—

[4] And the said Wheelock further represents that he has by power of Attorney for many weighty reasons, given full Power to the said Trustees to fix upon and determine the place for said School most subservient to the great end in view, and to enable them understandingly to give the preference, the said Wheelock has laid before the said Trustees the several Offers which have been generously made in the several Governments in America to encourage and invite the settlement of said School among them for their own private emolument, and the increase of Learning in their respective places as well as for the furtherance of the general design in view.

[5] And whereas a large number of the Proprietors of Lands in the western part of this our Province of New Hampshire, animated & excited thereto by the generous example of his Excellency their Governor, and by the liberal Contributions of

many Noblemen and Gentlemen in England; and especially by the consideration that such a situation would be as convenient as any for carrying on the great design among the Indians; and also considering that without the least impediment to the said design the same School may be enlarged & improved to promote Learning among the English & be a means to supply a great number of Churches & Congregations which are likely soon to be formed in that new Country with a learned & orthodox Ministry; they the said Proprietors have promised large Tracts of Land for the uses aforesaid, provided the School shall be settled in the western part of our said Province.

[6] And they the said Right Honorable, Honorable and worthy Trustees before mentioned having maturely consider'd the reasons & arguments in favour of the several Places proposed, have given the preference to the western part of our said Province lying on Connecticut River, as a situation most convenient for said School;

[7] And the said Wheelock has further represented a necessity of a legal Incorporation in order to the safety and well being of said Seminary, and its being capable of the tenure & disposal of Lands & bequests for the use of the same.

[8] And the said Wheelock has also represented that for many weighty reasons it will be expedient at least in the infancy of said Institution or 'till it can be accommodated in that new Country and he & his Friends be able to remove and settle by and round about it, that the Gentlemen whom he has already nominated in his last Will (which he has transmitted to the aforesaid Gentlemen of the Trust in England) to be Trustees in America should be of the Corporation now proposed

[9] & also as there are already large Collections for said School in the hands of the aforesaid Gentlemen of the Trust in England and all reason to believe from their singular wisdom, piety and zeal to promote the Redeemers cause (which has already procured for them the utmost confidence of the Kingdom) we may expect they will appoint Successors in time to come who will be men of the same Spirit whereby great good may & will accrue many ways to the institution & much be done by their example and influence to encourage and facilitate the whole design in view; for which reasons said Wheelock desires that the Trustees aforesaid may be vested with all that power therein which can consist with their distance from the same

[10] KNOW YE THEREFORE, that We considering the Premises and being willing to encourage the laudable & charitable design of spreading Christian Knowledge among the Savages of our American Wilderness and also that the best means of Education be established in our Province of New Hampshire for the benefit of said Province, *DO of our special grace certain*

knowledge and mere motion by and with the advice of our Council for said Province by these Presents WILL, ordain, grant & constitute that there be a College erected in our said Province of New Hampshire by the name of DARTMOUTH COLLEGE

[11] *for the education & instruction of Youth of the Indian Tribes in this Land in reading, writing & all parts of Learning which shall appear necessary and expedient for civilizing & christianizing Children of Pagans as well as in all liberal Arts and Sciences; and also of English Youth and any others,*

[12] *and the Trustees of said College may and shall be one body corporate and politick in deed action & name, and shall be called, named & distinguish'd by the Name of the TRUSTEES OF DARTMOUTH COLLEGE And further we have willed given granted constituted and ordained and by this our present Charter of our special grace certain knowledge & mere motion with the advice aforesaid Do for us our heirs and Successors for ever will give grant constitute & ordain that there shall be in the said DARTMOUTH COLLEGE from henceforth and for ever a body politick consisting of Trustees of said Dartmouth College*

[13] *and for the more full & perfect erection of said Corporation & body politick consisting of Trustees of Dartmouth College We of our special grace certain knowledge & mere motion Do by these Presents for us our Heirs & Successors make ordain constitute and appoint our trusty and well beloved JOHN WENTWORTH Esquire Governor of our said Province, and the GOVERNOR of our said Province of New Hampshire for the time being and our Trusty and well beloved THEODORE ATKINSON Esquire now President of our Council of our said Province GEORGE JAFFREY & DANIEL PIERCE Esquires both of our said Council and PETER GILMAN Esquire now Speaker of our House of Representatives in said Province & WILLIAM PITKIN Esquire one of the Assistants of our Colony of Connecticut & our said trusty and well beloved ELEAZER WHELOCK of Lebanon Doctor in Divinity, BENJAMIN POMROY of Hebron JAMES LOCKWOOD of Weathersfield TIMOTHY PITKIN & JOHN SMALLEY of Farmington & WILLIAM PATTEN of Hartford all of our said Colony of Connecticut Ministers of the Gospel (the whole number of said Trustees consisting and hereafter forever to consist of TWELVE & no more) to be Trustees of said Dartmouth College in this our Province of New Hampshire³*

³By an Act of the New Hampshire Legislature passed at the June Session 1807 (Second College Grant Act), the members of the Governor's Council, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Superior Court are made, *ex officio*, Trustees of the College, in respect to the grant made by that act and any future grant to the College by the State.

[14] And we do further of our special grace certain knowledge and mere motion for us our Heirs and Successors will give grant and appoint that the said Trustees & their Successors shall for ever hereafter be in deed act & name a body corporate & politick & that they the said body corporate & politick shall be known & distinguished in all deeds grants bargains sales writings evidences or otherwise howsoever & in all Courts for ever hereafter plead and be impleaded by the Name of the Trustees of Dartmouth College

[15] and that the said Corporation by the name aforesaid shall be able and in law capable for the use of said Dartmouth College to have get acquire purchase receive hold possess and enjoy tenements hereditaments jurisdictions and franchizes for themselves and their Successors in fee simple or otherwise howsoever & to purchase receive or build any House or Houses or any other buildings as they shall think needful & convenient for the use of said Dartmouth College and in such Town in the western part of our said Province of New Hampshire as shall by said Trustees or the major part of them be agreed on their said Agreement to be evidenced by an instrument in writing under their hands ascertaining the same. And also to receive and dispose of any Lands goods chattels and other things of what nature soever for the use aforesaid And also to have accept and receive any rents profits annuities gifts legacies donations or bequests of any kind whatsoever for the use aforesaid so neverthe less that the yearly value of the Premises do not exceed the Sum of six thousand pounds Sterling⁴ and therewith or otherwise to support and pay as the said Trustees or the major part of such of them as are regularly convened for that purpose shall agree the President Tutors and other Officers and Ministers of said Dartmouth College & also to pay all

By an act passed at the 1816 session of the New Hampshire Legislature an attempt was made to change the name of the institution to Dartmouth University, to increase the number of Trustees to twenty-one and to create a board of twenty-five Overseers. The Trustees refused to accept this amendment, August 27, 1816. Litigation ensued which resulted, February 2, 1819, in a decision by the Supreme Court of the United States in the Dartmouth College Case (Trustees of Dartmouth College v. William H. Woodward, 4 Wheat. 518) declaring this amendment unconstitutional and establishing the charter as a contract to be modified only by the agreement of both the parties at interest. See "Judicial Decisions," *Infra*.

By an act passed in 1891, the corporation was authorized to have five additional Trustees, to be chosen by the Alumni of the College. This act, however, was not accepted by the corporation, and has expired by reason of express limitations contained in it. Laws of 1891, chap. 5.

⁴By an Act passed in 1883, "The Trustees of Dartmouth College may have, accept, receive, and hold, for the use of said College, any and all rents, profits, annuities, gifts, legacies, donations, and bequests of any kind whatsoever, which may come to their hands in that behalf." Laws of 1883, chap. 177. This act was accepted by a vote of the Trustees passed December 20, 1883. Trustees Records, Vol. IV, page 346.

such Missionaries & Schoolmasters as shall be authorized appointed & employed by them for civilizing & christianizing & instructing the Indian Natives of this Land their several allowances & also their respective annual Salaries or allowances & all such necessary & contingent charges as from time to time shall arise & accrue relating to the said Dartmouth College And also to bargain sell let set or assign Lands tenements or hereditaments goods or chattels & all other things whatsoever by the name aforesaid in as full and ample a manner to all intents and purposes as a natural person or other body politick or corporate is able to do by the laws of our realm of Great Britain or of said province of New Hampshire⁵

[16] And further *of our special grace certain knowledge & mere motion to the intent that our said Corporation & body politick may answer the end of their erection & Constitution & may have perpetual succession & continuance for ever We do for us our heirs and Successors will give & grant* unto the said Trustees of Dartmouth College & to their Successors for ever that there shall be once a year & every year a meeting of said Trustees held at said Dartmouth College at such time as by said Trustees or the major part of them at any legal meeting of said Trustees shall be agreed on the first meeting to be called by the said Eleazer Wheelock as soon as conveniently may be within one year next after the enrollment of these our Letters Patent at such time & place as he shall judge proper And the said Trustees or the major part of any seven or more of them shall then determine on the time for holding the annual Meeting aforesaid which may be alter'd as they shall hereafter find most convenient And we further order and direct that the said Eleazer Wheelock shall notify the time for holding said first meeting to be called as aforesaid by sending a letter to each of said Trustees & causing an advertizement thereof to be printed in the New Hampshire Gazette & in some publick News Paper printed in the Colony of Connecticut But in case of the Death or incapacity of the said Wheelock then such meeting to be notified in manner as aforesaid by the Governor or Commander in Chief of our said Province for the time being

[17] And we do also *for us our Heirs & Successors hereby will give and grant* unto the said Trustees of Dartmouth College aforesaid & to their Successors for ever that when any seven or more of the said Trustees or their Successors are convened & met together for the service of said Dartmouth College at any time or times such seven or more shall be capable to act as fully & amply to all intents & purposes as if all the Trustees of said College were personally present—& all affairs & actions

⁵Corporation authorized to take and hold stock of the Hanover Water Works Company to an amount, not exceeding \$25,000. Laws of 1893, chap. 290 sect. 5.

whatsoever under the care of the said Trustees shall be determined by the majority or greater number of those seven or more Trustees so convened & met together

[18] And we do further will ordain & direct that the President Trustees, Professors & Tutors & all such Officers as shall be appointed for the publick instruction & government of said College shall before they undertake the execution of their respective Offices or Trusts or within one year after take the Oaths & subscribe the declaration provided by an act of Parliament made in the first year of King George the first entitled "An act for the further security of his Majesty's Person & Government & the succession of the Crown in the heirs of the late princess Sophia being Protestants & for the extinguishing the hopes of the pretended Prince of Wales & his open & secret Abettors" that is to say the President before the Governor of our said Province for the time being or by one by him impowered to that service or by the President of our said Council & the Trustees Professors Tutors & other Officers before the President of said College for the time being who is hereby impower'd to administer the same an entry of all which shall be made in the Records of said College

[19] And we *do for us our heirs & Successors hereby will give & grant full Power & Authority* to the President hereafter by us named & to his Successors or in case of his failure to any three or more of the said Trustees to appoint other occasional meetings from time to time of the said seven Trustees or any greater number of them to transact any matter or thing necessary to be done before the next annual meeting and to order notice to the said seven or any greater number of them of the times & places of meeting for the service aforesaid by a letter under his or their hands of the same one month before said meeting Provided always that no standing Rule or order be made or altered for the regulation of said College nor any President or Professor be chosen or displaced nor any other matter or thing transacted or done which shall continue in force after the then next annual meeting of said Trustees as aforesaid⁶

[20] And further we *do by these Presents for us our Heirs and Successors create make constitute nominate & appoint* our Trusty and well beloved ELEAZER WHELOCK Doctor in Divinity the FOUNDER of said College to be PRESIDENT of said DARTMOUTH COLLEGE and to have the immediate care of Education & government of such Students as shall be ad-

⁶"The Trustees of Dartmouth College may hold a legal meeting at any time, upon such notice as may be prescribed by a rule adopted by them," . . . Laws of 1893, chap. 43, Sect. 1. Act accepted by the Trustees, May 3, 1893. Trustees Records, Vol. V, page 49. By a rule adopted by the Trustees at the meeting of May 5, 1893, "special meetings . . . may be called by order of the President upon seven days notice deposited in the post-office." Trustees Records, Vol. V, page 62.

mitted into said DARTMOUTH COLLEGE for instruction & education and do will give & grant to him in said Office full power authority & right to nominate appoint constitute & ordain by his last will such suitable & meet person or Persons as he shall chuse to succeed him in the Presidency of said Dartmouth College & the person so appointed by his last Will to continue in Office vested with all the powers privileges Jurisdiction & authority of a President of said Dartmouth College that is to say so long and untill such appointment by said last Will shall be disapproved by the Trustees of said Dartmouth College

[21] And we do also for us our heirs and Successors will give & grant to the said Trustees of Dartmouth College & to their Successors for ever or any seven or more of them convened as aforesaid that in case of the ceasing or failure of a President by any means whatsoever that the said Trustees do elect nominate & appoint SUCH qualified person as they or the major part of any seven or more of them convened for that purpose as above directed shall think fit to be PRESIDENT of said DARTMOUTH COLLEGE and to have the care of the Education & government of the Students as aforesaid

[22] & in case of the ceasing of a President as aforesaid the Senior Professor or Tutor being one of the Trustees shall exercise the Office of a President untill the Trustees shall make choice of & appoint a President as aforesaid & such Professor or Tutor or any three or more of the Trustees shall immediately appoint a meeting of the body of the Trustees for the purpose aforesaid

[23] AND also we do will give and grant to the said Trustees convened as aforesaid that they elect nominate & appoint so many Tutors and Professors to assist the President in the Education & government of the Students belonging thereto as they the said Trustees shall from time to time & at any time think needful & serviceable to the interests of said Dartmouth College And also that the said Trustees or their Successors or the major part of any seven or more of them convened for that purpose as above directed shall at any time displace & discharge from the service of said Dartmouth College any or all such Officers & elect others in their room & stead as before directed

[24] And also that the said Trustees or their Successors or the major part of any seven of them which shall convene for that purpose, as above directed do from time to time as occasion shall require elect constitute & appoint a TREASURER a CLERK an USHER & a STEWARD for the said DARTMOUTH COLLEGE & appoint to them & each of them their respective businesses & trusts & displace & discharge from the service of said College such Treasurer Clerk Usher or Steward & to elect others in their room & stead

[25] which Officers so elected as before directed We do for us our heirs & successors by these Presents constitute & establish in their respective Offices & do give to each & every of them full power & Authority to exercise the same in said Dartmouth College according to the directions & during the pleasure of the said Trustees as fully & freely as any like Officers in any of our Universities Colleges or Seminaries of learning in our Realm of Great Britain lawfully may or ought to do,

[26] & also that the said Trustees & *their Successors or the major part of any seven or more of them which shall convene for that purpose as is above directed* as often as one or more of said Trustees shall die or by removal or otherwise shall according to their judgement become unfit or incapable to serve the interests of said College do as soon as may be after the Death removal or such unfitness or incapacity of such Trustee or Trustees elect & appoint such Trustee or Trustees as shall supply the place of him or them so dying or becoming incapable to serve the interests of said College & every Trustee so elected & appointed shall by virtue of these Presents & such election & appointment be vested with all the Powers & privileges which any of the other Trustees of said College are hereby vested with⁷

[27] And we *do further Will ordain &* direct that from & after the expiration of Two years from the enrollment of these Presents such vacancy or vacancies as may or shall happen by death or otherwise in the aforesaid number of Trustees shall be filled up by election as aforesaid so that when such vacancy or vacancies shall be filled up unto the complete number of TWELVE Trustees Eight⁸ of the aforesaid whole number of the body of Trustees shall be resident and respectable Freeholders of our said Province of New Hampshire & seven of said whole number shall be Laymen.

⁷At a meeting of the Trustees held June 22, 1891, resolutions were adopted of which the following are copies:—

"I. Resolved: That the graduates of the College, the Thayer School and the Chandler School, of at least five years' standing, may nominate a suitable person for election to each of the five trusteeships, next becoming vacant on the board of trustees of the College (except those held by the Governor and President) and may so nominate for his successors in such trusteeship;

II. Resolved: That whenever any such vacancy shall occur in such trusteeship or the succession thereto, the trustees will take no action to fill the same until the expiration of three months after notice to the Secretary of the Alumni of the occurrence of such vacancy, unless a nomination therefor shall be sooner presented by the alumni to said Trustees." Trustees Records, Vol. IV, page 528.

⁸By An act passed in 1893, it was provided that in filling vacancies in the membership of the Trustees, they "may elect persons not resident in New Hampshire to a number not exceeding five." Laws of 1893, Chap. 43, Sect. 1. This act was accepted by the Trustees, May 3, 1893. Trustees Records, Vol. V, page 49.

By an Act passed in 1921 the Act of 1893 was amended so that the Trustees "may elect persons not resident in New Hampshire to a number not exceeding seven." Laws of 1921, Chap. 245. This act was accepted by the Trustees April 22, 1921. Trustees Records, Vol. VII, page 15.

[28] And we *do further of our special grace certain knowledge and mere motion will give and grant* unto the said Trustees of Dartmouth College that they *and their Successors or the major part of any seven of them which shall convene for that purpose as is above directed* may make & they are hereby fully impowered from time to time fully & lawfully to make and establish such Ordinances Orders & Laws as may tend to the good and wholesome government of the said College & all the Students & the several Officers & Ministers thereof & to the publick benefit of the same not repugnant to the Laws & Statutes of our Realm of GREAT BRITAIN or of this our Province of NEW HAMPSHIRE and not excluding any Person of any religious denomination whatsoever from free & equal liberty & advantage of Education or from any of the liberties and privileges or immunities of the said College on account of his or their speculative sentiments in Religion & of his or their being of a religious profession different from the said Trustees of the said Dartmouth College And such Ordinances orders & Laws which shall as aforesaid be made We do by these presents for us our heirs & Successors ratify allow of & confirm as good & effectual to oblige & bind all the Students & the several Officers & Ministers of the said College And we do hereby authorize & impower the said Trustees of Dartmouth College & the President Tutors & Professors by them elected & appointed as aforesaid to put such ordinances laws and orders in execution to all proper intents & purposes

[29] And we *do further of our special grace certain knowledge & mere motion Will give & grant* unto the said Trustees of said Dartmouth College for the encouragement of Learning and animating the Students of said College to diligence & industry & a laudable progress in Literature that they *& their Successors or the major part of any seven or more of them convened for that purpose as above directed* do by the President of said College for the time being or any other deputed by them give & grant any such degree or degrees to any of the Students of the said College or any others by them thought worthy thereof as are usually granted in either of the Universities or any other College in our Realm of Great Britain, & that they sign & seal Diplomas or certificates of such Graduations to be kept by the Graduates as perpetual memorials & testimonials thereof

[30] AND we *do further of our special grace certain knowledge & mere motion for us our heirs & Successors by these Presents give & grant* unto the Trustees of said Dartmouth College & to their Successors that they & their Successors shall have a common SEAL under which they may pass all Diplomas or Certificates of degrees & all other affairs & business of & concerning the said College which shall be engraven in such a form

and with such an inscription as shall be devised by the said Trustees for the time being *or by the major part of any seven or more of them convened for the service of the said College as is above directed*

[31] AND WE *do further for us our heirs & Successors give and grant* unto the said Trustees of the said Dartmouth College *& their Successors or to the major part of any seven or more of them convened for the service of the said College* full power & authority from time to time to nominate & appoint all other Officers & Ministers which they shall think convenient & necessary for the service of the said College not herein particularly named or mention'd which Officers & Ministers we do hereby empower to execute their Offices & Trusts as fully & freely as any of the Officers & Ministers in our Universities or Colleges in our REALM OF GREAT BRITAIN lawfully may or ought to do

[32] AND further that the generous Contributors to the support of this design of spreading the knowledge of the only true God and Saviour among the American Savages may from time to time be satisfied that their liberalities are faithfully disposed of in the best manner for that purpose & that others may in future time be encouraged in the exercise of the like liberality for promoting the same pious design it shall be the duty of the President of the Said Dartmouth College & of his Successors annually or as often as he shall be thereunto desired or required to transmit to the Right honorable, honorable & worthy Gentlemen of the Trust in England before mentioned a faithful account of the improvement & disbursements of the several Sums he shall receive from the Donations & bequests made in England through the hands of said Trustees & also advise them of the general plans laid & prospects exhibited as well as a faithful account of all remarkable occurrences in order if they shall think expedient that they may be published And this to continue so long as they shall perpetuate their board of Trust & there shall be any of the Indian Natives remaining to be proper Objects of that Charity

[33] AND lastly our express Will & pleasure is and we do by these Presents for us our heirs and Successors give & grant unto the said Trustees of Dartmouth College & to their Successors forever that these our Letters Patent or the enrollment thereof in the Secretary's OFFICE of our Province of New Hampshire aforesaid shall be good & effectual in the Law to all intents & purposes against us our heirs and Successors without any other Licence Grant or Confirmation from us our heirs & Successors hereafter by the said Trustees to be had & obtained notwithstanding the not writing or misrecital not naming or misnaming the aforesaid Offices Franchises Priviledges Immunities or other

the Premises or any of them and notwithstanding a writ of Ad quod Damnum hath not issued forth to enquire of the Premises or any of them before the ensealing hereof any Statute Act Ordinance or Provision or any other matter or thing to the contrary notwithstanding.

[34] TO HAVE AND TO HOLD ALL & singular the Privileges Advantages Liberties Immunities and all other the Premises herein & hereby granted & given or which are meant mentioned or intended to be herein & hereby given & granted unto them the said TRUSTEES OF DARTMOUTH COLLEGE & to their Successors for ever.

[35] IN TESTIMONY whereof We have caused these our Letters to be made Patent and the publick Seal of our said Province of NEW HAMPSHIRE to be hereunto affixed WITNESS our Trusty and well beloved JOHN WENTWORTH Esquire Governor and Commander in Chief in and over our said Province &c^a. this THIRTEENTH day of DECEMBER in the TENTH year of our Reign and in the year of our Lord one thousand seven hundred and Sixty nine.—

By his Excellency's Command }
with advice of Council }

[Signed] THEODORE ATKINSON Sec'y

[Signed] J. WENTWORTH

Province of New Hampshire—
Decemb^r 18th 1769. Recorded
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4. Fol: 22 to 33 both inclu-
sive. pr

[Signed]

THEODORE ATKINSON Sec'y

JUDICIAL DECISIONS

Charter Not to be Amended Without Consent of Trustees. The charter of Dartmouth College is a contract between the state of New Hampshire and the trustees of the college within the meaning of that clause of the United States Constitution which forbids the states to pass a law impairing the obligation of a contract. Thus the New Hampshire act of 1816, purporting to change the name and composition of the Board of Trustees without its consent, was unconstitutional

and void. *Trustees of Dartmouth College v. William H. Woodward*, 4 Wheat. 518, 4 L. Ed. 629 (1819).

Liability for Injury to Student. The college was not liable for injuries to a student caused by the alleged negligence of the superintendent of buildings in razing a chimney. The college not being conducted for money-making, but being supported largely by gifts and tuition fees, partakes of the eleemosynary character which gives it a greater degree of immunity from tort liability than is possessed by commercial corporations. *Currier v. Dartmouth College*, 105 Fed. 886, affirmed 117 Fed. 44, 54 C.C.A. 430 (1902).

Tax Exemption of College Lands. Lands comprising the entire township of Wheelock were originally granted by the state of Vermont to Dartmouth College with the stipulation that they should be forever free and exempt from public taxes so long as their incomes and profits should be applied to the purposes of the institution. About two-thirds of these lands were leased to various lessees for nine hundred ninety eight years, rent relinquished; one-fourth were leased on a rental basis, and one-twelfth were used by the college. A legislative act of 1851 authorized the college to convey title to the lands in fee simple by warranty deed, and an act of 1857 authorized the Town of Wheelock to appraise and list the lands for taxation. It was held that the phrase "public taxes" as used in the original grant of exemption did not include town taxes, and the lands were subject to taxation by the town of Wheelock. Otherwise the entire burden of local taxation would have fallen on persons and personal property. *Morgan v. Cree*, 46 Vt. 773, 14 Am. Rep. 640 (1861).

DUKE UNIVERSITY
DURHAM, NORTH CAROLINA

A privately controlled co-educational university, under the auspices of the Methodist Episcopal Church, South. In 1859 the state relinquished control of a normal college in Randolph County, North Carolina, and the college became Trinity College, owned by the Methodist Episcopal Church, South. In 1892 Trinity College was moved to Durham, North Carolina, and operated under the name of Trinity College until 1924, when it was merged into Duke University, of which it remains an integral part. The university has seven groups of studies leading to the degree of Bachelor of Arts: General, Business Administration, Religion, Pre-Medical, Teaching, Pre-Legal, and Honors; and three groups of studies leading to the degree of Bachelor of Science: Civil, Mechanical, and Electrical Engineering. There is a Graduate School of Arts and Sciences, a Law School, a School of Religion, and a School of Medicine. The endowment fund of the university in 1930 exceeded \$23,000,000, and the value of the plant and equipment was reckoned at approximately \$23,500,000. The total assets were in excess of \$48,000,000.

CHARTER OF DUKE UNIVERSITY¹

As Amended December 30, 1924.

"SECTION 1. That A. P. Tyer, J. H. Southgate, B. N. Duke, G. A. Oglesby, V. Ballard, J. A. Long, J. F. Bruton, J. N. Cole, F. A. Bishop, J. G. Brown, C. W. Toms, J. W. Alspaugh, W. R. Odell, J. A. Gray, F. Stikeleather, Kope Elias, S. B. Turrentine, P. H. Hanes, T. F. Marr, G. W. Flowers, M. A. Smith, R. H. Parker, W. J. Montgomery, F. M. Simmons, O. W. Carr, R. A. Mayer, N. M. Jurney, Dred Peacock, B. B. Nicholson, W. G. Bradshaw, E. T. White, T. N. Ivey, J. B. Hurley, R. L. Durham, W. C. Wilson, and their associates and successors shall be, and continue as they have been, a body politic and corporate under the name and style of DUKE UNIVERSITY, and under such name and style shall have perpetual existence and are hereby invested with all the property and rights of property which now belong to the said corporation, and said corporation shall henceforth and perpetually, by the name and style of DUKE UNIVERSITY, hold and use all the authority, privileges, and possessions it had or exercised under any former title and name, and be subject to all recognized legal liabilities and obligations now outstanding against said corporation.

SECTION 2. That such corporation is authorized to receive and hold by gift, devise, purchase or otherwise, property, real and personal, to be held for the use of said University and its dependent schools or for the use of either or both (as may be designated in the conveyance or will).

SECTION 3. That the Trustees shall be thirty-six in number, of whom twelve shall be elected by the North Carolina Conference of the M. E. Church, South; twelve by the W. N. C. Conference of the said church; and twelve by the graduates of said University; *Provided, however*, That no person shall be elected a Trustee till he has first been recommended by a majority of the Trustees present at a regular meeting; and the Trustees shall have power to remove any member of their body who may remove beyond the boundary of the State or who may refuse or neglect to discharge the duties of a Trustee. The term of office of Trustees shall be six years, and they shall be so arranged that four Trustees shall be elected by each Conference and four by the graduates every two years. The Trustees shall regulate by by-laws the manner of election of the Trustees to be chosen by the graduates. Should there exist a vacancy by death, resig-

¹*History and Government of Duke University*. pp. 20-22. Published by Duke University.

nation, or otherwise of any Trustee, the same shall be filled for the unexpired term by the Board of Trustees. That the present Trustees shall continue and remain in office during the term for which they have been heretofore respectively elected.

SECTION 4. That the said corporation shall be under the supervision, management and government of a president and such other persons as said Trustees may appoint; the said president, with the advice of the other persons so appointed, shall from time to time make all needful rules and regulations for the internal government of said University and prescribe the preliminary examinations, and the terms and conditions on which pupils shall be received and instructed.

SECTION 5. The said Trustees shall have power to make such rules, regulations, and by-laws not inconsistent with the Constitution of the United States and of this State, as may be necessary for the good government of said University and the management of the property and funds of the same.

SECTION 6. That the Trustees shall have power to fix the time of holding their annual and other meetings, to elect a president and professors for said University, to appoint an executive committee to consist of seven members, which committee shall control the internal regulations of said University and fix all salaries and emoluments, and to do all other things necessary for an institution of learning not inconsistent with the laws of this State and of the United States.

SECTION 7. That the Faculty and Trustees shall have the power of conferring such degrees and marks of honor as are conferred by colleges and universities generally; and that five Trustees shall be a quorum to transact business.

SECTION 8. That all laws and parts of laws or of the charter heretofore granted which are in conflict with this act are hereby repealed.

SECTION 9. That this act shall be in force from and after its ratification and acceptance by the Board of Trustees."²

²*Ibid.* pp. 3-15. Duke University is the outgrowth of Union Institute Academy, first incorporated in 1841. The first charter of Union Institute Academy provided for a board of seven trustees. The institution was not at that time affiliated with any religious body. In 1851 a new charter was obtained incorporating the institute as "Normal College" and increasing the board to eighteen members, self-perpetuating, and making five a quorum. It was further provided in the charter of 1851, that "pupils" entering said college must sign a declaration of intention to teach in the common schools of North Carolina. No further teachers' examination was to be required of those given a certificate by the college. In 1852, the charter of 1851 was amended, increasing the board to thirty-five members and making the Governor of the State *ex officio* President of the Board of Trustees, and "the common school superintendent, should such an officer exist", *ex officio* Secretary of the Board. The board was empowered, among other things, to appoint "an Executive Committee, to consist of seven members, which committee shall control the internal regulations of said College, and fix all salaries and emoluments . . ."

The normal-school character of the institution and its relation to the State was further established by reaffirming the right of its graduates to teach without further examination and by requiring an annual report by the trustees to the Legislature concerning not only the "Normal College" but the "condition and progress of normal school generally, together with other information deemed important in the education of teachers". A loan of ten thousand dollars from the "literary fund" of the state was authorized.

In 1856, the Trustees of the Normal College sought to place the institution under the "ownership and control" of the North Carolina Conference of the Methodist Episcopal Church, South. By "An Act to Amend the Charter of Normal College", passed February 16, 1859, the college became Trinity College, "a literary institution for the North Carolina Conference of the Methodist Episcopal Church, South." The board of control was not changed in number but the power to fill vacancies was vested in "the North Carolina Conference", which body, however, could elect only those who had "been recommended by a majority of the Trustees present at a regular meeting." The sections of the charter of 1852 pertaining to *ex officio* membership on the board by the Governor and the common school superintendent, the granting of teachers' certificates and the annual report to the Legislature, were repealed. Sections five and six of this charter of 1859 are reproduced here as examples of unusual charter provisions.

Sec. 5. Be it further enacted, That no person shall keep, maintain, or have at Trinity College, or within two miles thereof, any tippling-house establishment, or place for the sale of wine, cordials, spirituous or malt liquors; nor shall any person in the State, without a written permission from the Faculty, sell, or offer to sell, give or deliver to any student of Trinity College, or to any other person, any wine, cordials, spirituous or malt liquors for the purpose of being used, or with a knowledge that the same will be used at said College, or within two miles thereof, by any student.

Sec. 6. Be it further enacted, That no person shall set up, keep or maintain at Trinity College, (or) within two miles thereof, any public billiard table, or other table of any kind at which games of chance or skill, by whatever name called, may be played; and that no person, without written permission from the Faculty, shall within the same limits exhibit any theatrical, sleight-of-hand, natural or artificial curiosities, or any concert, serenade, or performance in music, singing or dancing.

It was decided in 1889 to "remove the College to the City of Raleigh." Before this was accomplished, however, "Mr. Washington Duke and other citizens of Durham, N. C., made a proposition to the trustees to locate the college in Durham, and this proposition was accepted." By "An Act to Amend the Charter of Trinity College", passed January 21, 1891, the Legislature of North Carolina authorized the removal to Durham. This charter provided that the "Trustees shall be thirty-six in number, twelve to be elected by the North Carolina Conference, twelve by the W. N. C. Conference and twelve by graduates of said college." The term of office was set at six years.

On February 28, 1903, a new charter was obtained which unified and harmonized the provisions of existing legislation. The earlier provision, "that no person shall be elected a Trustee till he has first been recommended by a majority of the Trustees present at a regular meeting; and the Trustees shall have power to remove any member of their body . . ." was reenacted. The Trustees were re-empowered to "appoint an executive committee to consist of seven members, which committee shall control the internal regulations of said College . . ." and it was restipulated that "five Trustees shall be a quorum to transact business." The only further change prior to the charter of 1924, of which this entire footnote is an historical background, was an amendment in 1911, repealing a section of the previous charter which limited the permissible property holdings of the corporation,

GEORGE WASHINGTON UNIVERSITY

WASHINGTON, D. C.

A privately controlled, co-educational, non-sectarian university, chartered as Columbian College by Act of Congress in 1821. Name changed to Columbian University in 1873. Title "The George Washington University" authorized by Act of Congress in 1904. The Medical School has been in continuous operation since 1825. The Law School was first organized in 1826 and re-opened in 1865 after a period of discontinuance. The university now comprises: the Junior College (lower division); Columbian College (upper division); the Graduate Council, the School of Medicine, the Law School, the School of Engineering, the School of Pharmacy, the School of Education, the School of Government, the Division of Library Science, the Division of Fine Arts, the Division of University and Extension Students, and the Summer Sessions. Endowment in 1930 exceeded \$1,485,000, and annual income was more than \$1,300,000, of which approximately three-fourths was from student fees.

CHARTER OF GEORGE WASHINGTON UNIVERSITY

(Originally Columbian College)

CHAPTER X

An Act to incorporate the Columbian College
in the District of Columbia¹

Be it enacted, etc., That there be erected, and hereby is erected and established, in the District of Columbia, a college, for the sole and exclusive purpose of educating youth in the English, learned, and foreign languages, the liberal arts, sciences, and literature; the style and title of which shall be, and hereby is declared to be, "The Columbian College in the District of Columbia."²

SECTION 2. *And be it further enacted*, That the said college shall be under the management, direction, and government of a number of trustees, not exceeding thirty-one, to be elected triennially, by the contributors to the said college, qualified to vote, in such manner, and under such limitations and restrictions, as may be provided by the ordinances of the college, on the first Monday in May; and that the first trustees of the said college shall consist of the following persons, viz: Obadiah B. Brown, Luther Rice, Enoch Reynolds, Josiah Meigs, Spencer H. Cone, Daniel Brown, Return J. Meigs, Joseph Gibson, Joseph Cone, Thomas Corcoran, Burgis Allison, Thomas Sewall, and Joseph Thaw: which said trustees, and their successors, shall forever hereafter be, and they are hereby declared to be, one body politic and corporate, with perpetual succession, in deed and in law, to all intents and purposes whatsoever, by the name, style, and title of "The Columbian College in the District of Columbia;" by which name and title, they, the said trustees, and their successors, shall be competent and capable, at law and in equity, to take to themselves and their successors, for the use

¹*United States Statutes-at-Large*, (1789 to 1845, published 1846, Vol. 6, pp. 255-58).

²Amended, 1873, (*United States Statutes-at-Large*, Vol. 17, p. 629) by "An Act supplemental to the Act of February ninth, eighteen hundred and twenty-one, incorporating the Columbian College in the District of Columbia." By this Act the name was changed to Columbian University.

By the Act of 1904 (*United States Statutes-at-Large*, Vol. 33, pp. 7-8) the trustees were authorized to change the name of the university by not less than a two-thirds vote of the Board, and subject to the approval of the Secretary of the Interior and the Commissioner of Education. (The trustees voted the change of name to George Washington University, September 1, 1904.)

of the said college, any estate, in any messuage, lands, tenements, hereditaments, goods, chattels, moneys, and other effects, by gift, grant, bargain, sale, conveyance, assurance, will, devise, or bequest, of any person or persons whatsoever: *Provided*, The same do not exceed, in the whole, the yearly value of twenty-five thousand dollars; and the same messuages, lands, tenements, hereditaments, and estate, real and personal, to grant, bargain, sell, convey, assure, demise, and to farm let, and place out on interest, for the use of the said college, in such manner as to them, or at least nine of them, shall seem most beneficial to the institution, and to receive the rents, issues, and profits, income and interest, of the same, and to apply the same to the proper use and benefit of the said college: and by the same name to sue, commence, prosecute, and defend, implead and be impleaded, in any courts of law and equity, and in all manner of suits and actions whatsoever, and generally, by and in the same name, to do and transact all and every the business touching or concerning the premises.³

³The Act of 1873 (cited in the footnote to section 1) repealed the clause which limited the property held by the college to "the yearly value of twenty-five thousand dollars." This Act also gave permission to the corporation to increase the number of its "overseers" to twenty-one and the number of its trustees to twenty-one, "exclusive of the president of the faculty, who shall be, *ex officio*, a trustee of said corporation."

By an Act of 1898 (*United States Statutes-at-Large*, Vol. 30, pp. 328-29) new provisions for the control of the University were made, in effect making the institution Baptist. These provisions were: The Board of Trustees, on and after June 1, 1898, should consist of twenty-two members, including the President of the University; the remaining twenty-one were to be elected by the existing board before May 31, 1898, one group of seven to serve one year, one group two years and one group three years. It was required that the President and two-thirds of the trustees be Baptists and that a majority of the trustees be residents of the District of Columbia. Seven were declared a quorum to transact business except that of adopting and changing by-laws, for which a vote of two-thirds of all the trustees was required. The Act of 1898, by authorizing that vacancies in the Board of Trustees be filled by the Board, removed the institution from the direct control of the donors.

By an Act of 1904 (*United States Statutes-at-Large*, Vol. 33, pp. 7-8) the provisions of 1898 in regard to the President and two-thirds of the trustees being Baptists, were repealed and section seven (erroneously referred to as section thirteen) of the Act of 1821 was explicitly reenacted.

By an Act of 1905 (*United States Statutes-at-Large*, Vol. 33, pp. 1036-37) the trustees were authorized to increase their number from time to time, by a two-thirds vote, to a number not exceeding forty-five. Sections two and three of this Act of 1905 gave certain additional powers to the Corporation. These sections are as follows:

Sec. 2. That by and with the consent of the said university, colleges may be organized hereunder for the purpose of carrying on, in connection with the university, special lines of educational work in the arts, sciences, and liberal and technical knowledge, such colleges to be educationally a part of the system of the university, but upon independent financial foundations, and to this end any five or more persons desirous of associating themselves for the purpose of establishing a college hereunder may make, sign, and

SECTION 3. *And be it further enacted*, That the said trustees shall cause to be made for their use one common seal, with such devices and inscriptions thereon as they shall think proper, under and by which all deeds, diplomas, certificates, and acts of the said college, shall pass and be authenticated; and the same seal, at their pleasure, to break, and devise a new one.

SECTION 4. *And be it further enacted*, That the said trustees, or five of them at least, shall meet at the college, on College Hill, in the said District of Columbia, on the first Monday in March next, for the purpose of concerting and agreeing to such business as, in consequence of this act, shall be proper to be

acknowledge before any officer authorized to take acknowledgment of deeds in the District of Columbia, and with the assent of the university in writing, file in the office of the recorder of deeds of the said District a certificate in writing, in which shall be stated: First, the intention to organize a corporation under this Act and the assent of the university thereto; second, the name or title by which the college shall be known in law; third, the names of the trustees constituting the first board and such trustees may be divided into three classes, the term of office of one class expiring annually; fourth, the manner of nominating and electing successors to said trustees; fifth, the branch or branches of literature, arts, science, liberal or technical knowledge proposed to be taught; sixth, that the highest officer of said college shall be a dean, the dean and members of the faculty to be members of the educational councils of the university in accordance with the rules governing the university; seventh, that all degrees shall be bestowed by the university; eighth, that in all financial and legal responsibility the college shall be an independent organization. Upon filing such certificate the trustees named therein and their successors shall be a body politic, incorporated by the name and style stated in the certificate, and by that name and style shall have perpetual succession in association with the university, with power in the college to sue and be sued; plead and be impleaded; to acquire, hold, and convey property in all legal ways; to receive by gift, devise, or otherwise and hold, control, and administer endowments and gifts of money and property thereafter made to it for the maintenance of its educational work; to have and use a common seal, and to alter and change the same at pleasure; to make and alter from time to time such by-laws, not inconsistent with the Constitution of the United States or the laws in force in said District or the laws of the university regulating the conduct of educational work, as may be deemed necessary for the government of the college, but said college shall not confer academic or honorary degrees; such college shall hold the property of the institution and all moneys and property conveyed to it by purchase, gift, conveyance, will, devise, or bequest solely for the purposes of the educational work specified in said certificate; the trustees of such college shall faithfully apply all funds collected or received and the proceeds thereof belonging to the institution, according to their best judgment, in purchasing lands and erecting buildings, supporting necessary officers, instructors, and servants, and procuring all equipment, educational and otherwise, necessary to carry on the work of the college.

Sec. 3. That said university may enter into affiliated agreements with any institutions of learning outside of the District of Columbia, for the purpose of giving to students of such institutions the educational facilities of said university and the Departments of the Government in the city of Washington, which are by law open to students, upon such terms as are mutually agreed upon by the said university and the affiliated institutions.

Approved, March 3, 1905.

laid before them at the commencement of the work they have undertaken, and shall have power to adjourn from time to time, as they shall see cause, to any other times or places, for the purpose of perfecting the same. That there shall be a stated meeting of the said trustees held twice in every year at least, at such place and time as the said trustees, or a quorum thereof, shall appoint, of which public notice shall be given, after the first meeting, at least twenty days before [the] time of such intended meeting, whenever the president, to be appointed by them, shall deem the business of the institution to require the same, and give due notice thereof, which he is hereby authorized to do; and if, at such stated or occasional meetings, five of the said trustees shall not be present, those of them who shall be present, shall have power to adjourn the meeting to any other day, as fully and effectually, to all intents and purposes, as if the whole number of trustees for the time being were present; but, if five or more of the said trustees shall meet at the said appointed times, or at any other time of adjournment, then such five of the said trustees shall be a board or quorum, and a majority of the votes of them shall be capable of doing and transacting all the business and concerns of the said college not otherwise provided for by this act; and particularly of making and enacting ordinances for the government of the said college; of electing and appointing the president, professors, and tutors, for the said college; of agreeing with them for their salaries and stipends, and removing them for misconduct, or breach of the laws of the institution; of appointing committees of their own body to carry into execution all and every the resolutions of the board; of appointing a president, treasurer, secretary, stewards, managers, and other necessary and customary officers, for taking care of the estate and managing the concerns of the corporation; and, generally, a majority of voices of the board, or quorum of the said trustees, consisting of five persons at least, at any semi-annual, occasional, or adjourned meeting, after notice given as aforesaid, shall determine all matters and things (although the same be not herein particularly mentioned) which shall occasionally arise, and be incidentally necessary to be determined and transacted by the said trustees: *Provided always*, That no ordinances shall be of force which shall be repugnant to this charter, or to the laws of the District of Columbia.

SECTION 5. *And be it further enacted*, That the head or chief master for the said college shall be called and styled "The President," and the masters thereof shall be called "Professors and Tutors;" but neither president, professors, or tutors, while they remain such, shall ever be capable of the office of trustee.⁴

⁴This section was, in effect, repealed by the Act of 1873, which made the President a member of the Board. It was likewise rendered inoperative by the Act of 1898.

SECTION 6. *And be it further enacted*, That the president, professors, and tutors, or a majority of them, shall be called and styled "The Faculty of the College," which faculty shall have the power of enforcing the rules and regulations adopted by the trustees for the government of the pupils, by rewarding or censuring them, and, finally, by suspending such of them as, after repeated admonitions, shall continue disobedient and refractory, until a determination of a quorum of the trustees can be had; and of granting and confirming, by and with the approbation and consent of a board of the trustees, signified by their mandamus, such degrees in the liberal arts and sciences, to such pupils of the institution, or others, who, by their proficiency in learning, or other meritorious distinction, they shall think entitled to them, as are usually granted and conferred in colleges; and to grant, to such graduates, diplomas or certificates, under their common seal, and signed by the faculty, to authenticate and perpetuate the memory of such graduation.

SECTION 7. *And be it further enacted*, That persons of every religious denomination shall be capable of being elected trustees; nor shall any person, either as president, professor, tutor, or pupil, be refused admittance into said college, or denied any of the privileges, immunities, or advantages, thereof, for or on account of his sentiments in matters of religion.⁵

SECTION 8. *And be it further enacted*, That no misnomer of the said corporation shall defeat or annul any gift, grant, devise, or bequest, to or from the said corporation: *Provided*, The intent of the parties shall sufficiently appear upon the face of the gift, grant, will, or other writing, whereby any estate or interest was intended to pass to or from the said corporation.

SECTION 9. *And be it further enacted*, That the constitution of the said college, herein and hereby declared and established, shall be, and remain, the inviolate constitution of the said college forever; and the same shall not be altered, or alterable, by any ordinance or law of the said trustees: *Provided*, That it may be lawful for the Congress of the United States to revoke and repeal this act, at any and at all times whenever they shall think fit so to do.

SECTION 10. *And be it further enacted*, That it shall be the duty of the said board of trustees to keep a regular book or journal, in which shall be entered, under their direction, besides an account of all their ordinary acts and proceedings, all the by-laws, ordinances, rules, and regulations, which may be adopted by the said board, for their own government, and for the government of the institution; also, a schedule of all the property and effects, real, personal, or mixed, which shall or may be vest-

⁵This section was, in effect, repealed in regard to trustees and President by the Act of 1898, and was explicitly reenacted by section two of the Act of 1904.

ed in the said trustees, for the use of the said college, by virtue of any gift, grant, bargain, sale, will, or otherwise, together with annual statements concerning the accounts and finances of the institution. That it shall, moreover, be the duty of the said trustees, to cause to be enrolled, in said book or journal, the names of all the contributors to the institution qualified to vote for trustees, with their respective places of residence; and the said book or journal, shall, at all times, be open to the inspection or examination of the Attorney General of the United States; and, when required by either house of Congress, it shall be the duty of the said trustees to furnish any information respecting their own conduct, the state of the institution, and of its finances, which shall or may be so required.⁶

SECTION 11. *And be it further enacted*, That in case any vacancy or vacancies shall happen in the board of trustees aforesaid, by death, inability, resignation, or otherwise, at any time between the stated or triennial elections, that then it shall and may be lawful for the other trustees, or any five of them, to proceed, at any subsequent meeting after the happening of such vacancy or vacancies, to choose, by ballot, any suitable person or persons to fill the same.

SECTION 12. *And be it further enacted*, That the employment or application of the funds or income of the said corporation, or any part thereof, for any purpose or object other than those expressed and defined in the first section of this act, or the investment thereof in any other mode than is described and provided in the second section thereof, shall be deemed and taken to be a forfeiture of all the rights and immunities derived from this act, and the same shall, thenceforth, cease, and become null and void.

Approved, February 9, 1821.

JUDICIAL DECISIONS

Charitable Trust Faithfully Executed. A retired Naval officer devised real property to the Columbian University (now George Washington University) in trust to provide for the free education of young men to fit them for admission to the United States Naval Academy, or for positions as officers in the merchant marine service of the United States, or for appointment from civil life to the steam engineer department of the Navy. This was a valid charitable trust, not open to the objection of uncertainty or incapacity of execution. It could not be said to

⁶Rendered inoperative in regard to journal of voting contributors, etc., by the Act of 1898.

have failed in its execution to accomplish in some degree the charitable object, where at least two out of twenty-four of those who availed themselves of its benefits entered the Naval Academy. *Taylor v. Columbian University*, 226 U.S. 126, 33 S. Ct. 73, 57 L. Ed. 152 (1912).

GOUCHER COLLEGE

BALTIMORE, MARYLAND

A privately controlled Liberal Arts College for women, chartered as the Woman's College of Baltimore City in 1885, and now operating under the charter of 1914. By an amendment of 1910, the name was changed to Goucher College. Endowment, in 1930, \$2,433,000. Income from all sources, \$606,000.

CHARTER OF GOUCHER COLLEGE

BALTIMORE, MARYLAND¹

AN ACT to amend the charter of Goucher College, a corporation incorporated under the General Laws of Maryland, and subsequently amended by the General Assembly of Maryland by Chapter 325 of the Acts of Assembly of 1890, and subsequently amended by Chapter 40 of the Acts of Assembly of 1910, and to repeal said Chapter 40 of the Acts of 1910, and said Chapter 325 of the Acts of 1890, and to re-enact so much of Sections 1, 3, 4, 5 and 8 of said Chapter 40, of the Acts of 1910, and so much of Sections 1, 3, 4, 5 and 8 of said Chapter 325, of the Acts of 1890, as may not be inconsistent with this Act.
Be it enacted by the General Assembly of Maryland:

SECTION 1. The corporation heretofore constituted and organized as Goucher College, under the hereinafter mentioned laws and enactments, and located at Baltimore, shall be and remain a body corporate and politic to be known as Goucher College, with all the powers, rights and privileges conferred upon "The Trustees of the Woman's College of Baltimore City," a corporation duly incorporated under and by virtue of the general laws of Maryland on January 26, 1885, and subsequently amended by the Acts of 1890, Chapter 325, of the General Assembly of Maryland, by which the name of said corporation was changed to "The Woman's College of Baltimore," and further amended by the Acts of 1910, Chapter 40, of the General Assembly of Maryland, by which the name of said corporation was changed to "Goucher College"; and all property of every name and kind whatsoever now held and possessed by or accruing to said corporation is hereby continued and confirmed in and to the corporation hereby constituted, to be held by it for the purpose set forth in the gift, grant or conveyance thereof, if any, and for the further uses and purposes hereinafter set forth.

SECTION 2. Said corporation shall be constituted for the purpose of establishing, promoting and conducting a college for the higher education of women under auspices distinctively favorable to the maintenance of the faith and practice of the Christian religion, but all departments of said college shall be open alike to students of any religion or sect and no denominational or sectarian test shall be imposed in the choice of Trustees, officers or teachers, or in the admission of students. Said College may have as many departments as the Trustees shall determine.

¹*Charter and By-Laws of Goucher College.* Bulletin of Goucher College, New Series II, Vol. XIX, No. 3, pp. 3-15. Baltimore: Published by Goucher College, 1931.

SECTION 3. Said corporation shall consist of the Board of Trustees of Goucher College now in office and their successors. Said successors shall be elected as follows: At the annual meeting of said Board of Trustees now in office, to be held in the month of June, 1914, or at any adjourned meeting thereof, said Trustees shall, by ballot, elect in their place and stead, as their successors, members of said corporation, to be known as the Trustees thereof, to a number of not more than thirty-three, of whom the President of the College shall be one.² The Trustees so elected shall be divided, as nearly as possible, into three equal classes, and the term of the membership of the first class shall terminate in one year, of the second class in two years, and of the third class in three years, from the date of said election. Such Trustees shall have the right to elect their successors, of whom the President of the College shall always be one, under terms and conditions prescribed herein, and in such By-Laws as may be adopted by said corporation, not in conflict with the provisions of this Act. The term of the Trustees so elected shall be three years, except that in the case of a vacancy caused by the death, resignation or removal of a Trustee before the expiration of the term for which he or she was elected the Trustee elected to fill said vacancy shall hold membership only for the balance of the said term, provided that if the place vacated is that of a Trustee elected from a list furnished by an Annual Conference or the General Alumnae Association, as hereinafter provided, said vacancy shall be filled from a list of nominations furnished by said Annual Conference at its next session or said General Alumnae Association at its next meeting. All Trustees shall be eligible for re-election at the expiration of their respective terms. They shall hold office until their successors have been duly chosen and have accepted the trust. Said Trustees shall be the ultimate source of authority in all matters pertaining to the College, and may act through the President of the College, and other officers and agents, and through such Standing Committees as shall be named, fixed and their powers and functions be described in the By-Laws.

SECTION 4. Of the aforementioned thirty-three Trustees, four thereof, only two of which four may be clergymen, shall be elected from a list of nominations which the Baltimore Conference of the Methodist Episcopal Church in annual session may furnish; two thereof, only one of whom may be a clergyman, shall be elected from a list of nominations which the

²The amendment of 1890 specified a maximum of forty-five corporation members, eleven to constitute a quorum. The term of office was set at five years. *Laws of Maryland*, 1890, p. 350.

The amendment of 1910 specified a board of not less than twelve or more than forty, fifteen members to constitute a quorum for the transaction of business. The term of office was set at four years. *Laws of Maryland*, 1910, pp. 1442-44.

Central Pennsylvania Conference in annual session may furnish; two thereof, only one of whom may be a clergyman, shall be elected from a list of nominations which the Philadelphia Conference in annual session may furnish; one thereof, a layman or a clergyman, shall be elected from a list of nominations which the Wilmington Conference in annual session may furnish; one thereof, a layman or a clergyman, shall be elected from a list of nominations which the New York Conference in annual session may furnish; one thereof, a layman or a clergyman, shall be elected from a list of nominations which the New York East Conference in annual session may furnish; and three thereof shall be elected from a list of nominations which the General Alumnae Association of Goucher College in annual meeting may furnish; provided, however, that if said Annual Conferences, or any of them, or said General Alumnae Association shall at any time fail to furnish such list or lists, the Board of Trustees of Goucher College shall fill the vacancy for that year by electing a representative from said respective Conference or the General Alumnae Association; but the Board of Trustees shall have power to determine the conditions and requirements by which representation shall be continued to the General Alumnae Association or to the above named Conferences or extended to any other Conference, provided that the relative numerical representation of the interests of said organizations shall not be changed. The foregoing Sections three and four shall be in substitution and stand in place of Section two of the original certificate of incorporation filed on the twenty-sixth day of January, 1885; said Section two of said Articles of Incorporation being hereby declared to be of non-effect.³

SECTION 5. Said corporation, in its corporate name and capacity, shall be capable in law to purchase, have, hold, receive, and enjoy estate, real, personal, and mixed, of every kind and nature whatsoever, and the same to sell, grant, convey, alien, demise, manage, and dispose of at pleasure; to sue and be sued, plead and be impleaded, defend and be defended in any and all courts; to make, have, and use a common seal, and the same to alter, break, and renew at pleasure; to elect the President, faculty, and other instructors of the said College; to ordain, establish, and execute such By-Laws, ordinances, rules, and regulations as may be considered necessary, expedient, or convenient for the wise ordering and conducting of the affairs and government of said corporation, and for the proper

³The amendment of 1890 required that all members elected by the board must be approved by the Baltimore Annual Conference of the Methodist Episcopal Church; it did not contain any of the numerous special requirements found in Section 4, above. *Op. Cit.* p. 350.

The amendment of 1910 was, in these respects, not different from that of 1890. *Op. Cit.* pp. 1442-44.

regulation and instruction of the students connected with said College not contrary to the laws of the United States or of this State; and generally to do and execute all and singular the acts, matters, and things, and to transact all business which to it shall appertain tending to promote the usefulness and prosperity of said institution and in the exercise of the powers herein conferred. But neither the campus or the buildings of said corporation used for College purposes, nor the permanent funds of said corporation, nor any donations to said corporation, the income only of which may be used for the current expenses of said College, shall be pledged, hypothecated, or in any other manner be disposed of, by the Trustees for the purpose of paying the current expenses of said College or for borrowing money to pay the same.

SECTION 6. The Annual Meeting of said Board of Trustees shall be held during the Commencement Week of said College. At any Annual Meeting of the said Trustees, or at any adjournment thereof, any business may be transacted without special notice of such business having been previously given, unless such notice be required by the By-Laws. Special or extraordinary meetings may be called by the President of the College or by one-fourth of the Board of Trustees, by giving such notice of the time, place and object of said meetings as shall be provided in the By-Laws. At any meeting of said Board of Trustees the presence of nine members thereof shall constitute a quorum for the transaction of business. The concurring vote of at least nine Trustees, however, shall be requisite for the election of new Trustees.

SECTION 7. Said Goucher College shall continue the work done by the corporation, or corporators, or trustees, whose successors they are, in accordance with the Charter and amendments thereto, whereof this Act is an amendment, and as therein stated to be the creating and maintaining of a college for the higher education of women; and shall have the continuing power to admit students of the said College and other persons who shall merit the distinction to such degree or degrees in course or honorary, as the College may see fit to award, under such conditions and requirements as shall be fixed by the College in its By-Laws; and all powers, privileges, rights and franchises previously granted to, or reserved through and by all former charters, or amendments thereto, not inconsistent herewith, including the right to receive, hold and administer all gifts, grants, legacies and devices, as may have been intended for or heretofore given to the said "Woman's College of Baltimore," or to the said "The Trustees of the Woman's College of Baltimore City," or which may be hereafter so granted, bequeathed or devised, shall be and the same are hereby granted, confirmed

and continued to said corporation; and said corporation shall, in addition to the powers herein granted, have and possess all rights, powers, and privileges not inconsistent herewith, provided for and pertaining to corporations incorporated under the general laws of this State.

SECTION 8. This Act shall be construed liberally for every beneficial purpose hereby intended, and no omission to use any of the privileges hereby granted shall cause a forfeiture of the same, nor shall any gift, grant, conveyance or devise to or for the benefit of said corporation be defeated or prejudiced by any misnomer, misdescription, or informality whatever, provided the intention of the parties can be shown or ascertained beyond a reasonable doubt.

SECTION 9. Chapter 40 of the Acts of 1910 and Chapter 325 of the Acts of 1890 are hereby repealed and so much of Sections 1, 3, 4, 5 and 8 of the said Chapter 40 of the Acts of 1910, and so much of Sections 1, 3, 4, 5 and 8 of said Chapter 325 of the Acts of 1890, as may not be inconsistent with this Act are hereby re-enacted.

SECTION 10. This Act shall take effect from the date of its passage.

Sealed with the Great Seal and presented to the Governor, for his approval this 17th day of March, 1914, at eleven o'clock A. M.

A. EUGENE DE REEVES,
Secretary.

[SEAL]

Approved:

PHILIPPS LEE GOLDSBOROUGH,
Governor.

JESSE D. PRICE,
President of the Senate.

JAMES McCONKEY TRIPPE,
Speaker of The House of Delegates.

HARVARD UNIVERSITY

CAMBRIDGE, MASSACHUSETTS

A privately controlled university, the oldest institution of higher learning in the United States. Founded in 1636. Now comprises Harvard College, the Graduate School of Arts and Sciences, the Engineering School, the Theological School, the Law School, the Medical School, the Dental School, the School of Public Health, the School of Architecture, the School of Landscape Architecture, the School of City Planning, the Bussey Institution, the Graduate School of Education, and the Graduate School of Business Administration. Endowment in 1930, \$117,000,000. Income from all sources, approximately \$15,000,000.

LAWS RELATING TO HARVARD UNIVERSITY¹

Harvard College was founded in 1636, by a vote passed at an adjourned meeting (October 28, Old Style) of the General Court of the Colony of Massachusetts Bay which convened on September 8th of that year.

The language of the vote was as follows:—

“The Court agree to give Four Hundred Pounds towards a *School* or *College*, whereof Two Hundred Pounds shall be paid the next year, and Two Hundred Pounds when the work is finished, and the next Court to appoint where and what building.”

The ensuing year (1637) the General Court appointed twelve of the most eminent men of the colony (among whom were John Cotton and John Winthrop) “to take order for a college at Newtown.” The name, “Newtown,” was soon afterwards changed by the General Court to *Cambridge*, in recognition of the English University where many of the colonists had been educated.

The following year (1638) John Harvard, a non-conforming clergyman of England, who had been in the colony about one year, died at Charlestown, leaving half of his whole property and his entire library (about 300 volumes) to the institution. The value of this bequest was more than double the entire sum originally voted by the Court, and it was resolved to open the College at once, and to give it the name of *Harvard*. The first class was formed in the same year.

In 1642, during the administration of the first President, Henry Dunster, the general government of the College and the management of its funds were placed in the hands of a *Board of Overseers* established and empowered by the following Act of the General Court:—

“THE ACT

“ESTABLISHING THE OVERSEERS OF HARVARD COLLEGE.

“At a General Court held at Boston on the
8th of September, in the Year 1642,

“Whereas, through the good hand of God upon us, there is a College founded in Cambridge, in the county of Middlesex, called HARVARD COLLEGE, for the encouragement whereof this

¹From the *Official Register of Harvard University*, XXVIII, No. 46, November 21, 1931, pages xvii–xxxi inclusive.

Court has given the sum of four hundred pounds, and also the revenue of the ferry betwixt Charlestown and Boston, and that the well ordering and managing of the said College is of great concernment,—

“It is therefore ordered by this Court and the authority thereof, that the Governor and Deputy-Governor for the time being, and all the magistrates of this jurisdiction, together with the teaching elders of the six next adjoining towns,—viz. Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester,—and the President of the said College for the time being, shall, from time to time, have full power and authority to make and establish all such orders, statutes, and constitutions as they shall see necessary for the instituting, guiding, and furthering of the said College and the several members thereof, from time to time, in piety, morality, and learning; as also to dispose, order, and manage, to the use and behoof of the said College and the members thereof, all gifts, legacies, bequeaths, revenues, lands, and donations, as either have been, are, or shall be conferred, bestowed, or any ways shall fall or come to the said College.

“And whereas it may come to pass that many of the said magistrates and elders may be absent, or otherwise employed in other weighty affairs, when the said College may need their present help and counsel,—it is therefore ordered, that the greater number of magistrates and elders which shall be present, with the President, shall have the power of the whole. *Provided*, that if any constitution, order, or orders, by them made, shall be found hurtful unto the said College, or the members thereof, or to the weal public, then, upon appeal of the party or parties grieved unto the company of Overseers first mentioned, they shall repeal the said order or orders, if they shall see cause, at their next meeting, or stand accountable thereof to the next General Court.”²

The Board of Overseers appears to have been found too large a body to have the immediate direction of the College, and in 1650, through the efforts of President Dunster and others, a charter was granted to the College by the General Court, by which the College was made a *Corporation*, consisting of the President, five Fellows, and a Treasurer, or Bursar, to have perpetual succession by the election of members to supply vacancies, and to be called by the name of the *President and Fellows of Harvard College*. The powers conferred by this Act were

²This Act is copied from “The General Laws of the Massachusetts Colony, revised and published by order of the General Court in October, 1658,” which was the second edition of the Laws of the Colony, and was printed in 1660. It varies slightly in Phraseology from the Act contained in the Records of the General Court, Vol. II, page 24.

accompanied with a provision which required that all Orders and By-Laws of the Corporation should have the consent of the Overseers before they went into operation. This provision was found inconvenient and embarrassing in practice, and in 1657 a law was passed, called "An Appendix to the College Charter," by which the acts of the Corporation were declared to have immediate force and effect, and to be merely "alterable" by the Overseers to whom the Corporation was to be responsible.

The text of the College Charter, and of the appendix to the same is as follows:—

"THE CHARTER

"OF THE PRESIDENT AND FELLOWS OF HARVARD COLLEGE, UNDER THE SEAL OF THE COLONY OF MASSACHUSETTS BAY, AND BEARING DATE MAY 31, A. D. 1650.

"Whereas, through the good hand of God, many well-devoted persons have been, and daily are, moved and stirred up to give and bestow sundry gifts, legacies, lands and revenues, for the advancement of all good literature, arts, and sciences, in HARVARD COLLEGE, in Cambridge, in the county of Middlesex, and to the maintenance of the President and Fellows, and for all accommodations of buildings, and all other necessary provisions that may conduce to the education of the English and Indian youth of this country in knowledge and godliness,—

"It is therefore ordered and enacted by this Court and the authority thereof, that for the furthering of so good a work, and for the purposes aforesaid, from henceforth that the said College in Cambridge, in Middlesex, in New England, shall be a Corporation, consisting of seven persons, to wit, a President, five Fellows, and a Treasurer or Bursar; and that HENRY DUNSTER shall be the first President, SAMUEL MATHER, SAMUEL DANFORTH, Masters of Art, JONATHAN MITCHELL, COMFORT STARR, and SAMUEL EATON, Bachelors of Art, shall be the five Fellows, and THOMAS DANFORTH to be present Treasurer, all of them being inhabitants in the Bay, and shall be the first seven persons of which the said Corporation shall consist; and that the said seven persons, or the greater number of them procuring the presence of the Overseers of the College, and by their counsel and consent, shall have power, and are hereby authorized, at any time or times, to elect a new President, Fellows, or Treasurer, so oft, and from time to time, as any of the said person or persons shall die or be removed; which said President and Fellows for the time being shall forever hereafter, in name and fact, be one body politic and corporate in law, to all intents and purposes, and shall have perpet-

ual succession, and shall be called by the name of *President and Fellows of Harvard College*, and shall from time to time be eligible as aforesaid; and, by that name, they and their successors shall and may purchase and acquire to themselves, or take and receive upon free gift and donation, any lands, tenements, or hereditaments, within this jurisdiction of the Massachusetts Bay, not exceeding the value of five hundred pounds per annum, and any goods and sums of money whatsoever to the use and behoof of the said President, Fellows, and scholars of the said College; and also may sue and plead, or be sued and impleaded, by the name aforesaid, in all courts and places of judicature within the jurisdiction aforesaid.

“And that the said President, with any three of the Fellows, shall have power, and are hereby authorized, when they shall think fit, to make and appoint a common seal for the use of the said Corporation. And the President and Fellows, or the major part of them, from time to time, may meet and choose such officers and servants for the College, and make such allowance to them, and them also to remove, and, after death or removal, to choose such others, and to make from time to time such orders and by-laws, for the better ordering and carrying on the work of the College, as they shall think fit; *provided* the said orders be allowed by the Overseers. And also that the President and Fellows, or major part of them, with the Treasurer, shall have power to make conclusive bargains for lands and tenements, to be purchased by the said Corporation for valuable considerations.

“And, for the better ordering of the Government of the said College and Corporation,—Be it enacted by the authority aforesaid, that the President and three more of the Fellows shall and may from time to time, upon due warning or notice given by the President to the rest, hold a meeting for the debating and concluding of affairs concerning the profits and revenues of any lands, and disposing of their goods (provided that all the said disposings be according to the will of the donors), and for direction in all emergent occasions, execution of all orders and by-laws, and for the procuring of a general meeting of all the Overseers and Society, in great and difficult cases, and in cases of non-agreement; in all which cases aforesaid, the conclusion shall be made by the major part, the said President having a casting voice, the Overseers consenting thereunto. And that all the aforesaid transactions shall tend to and for the use and behoof of the President, Fellows, scholars, and officers of the said College, and for all accommodations of buildings, books and all other necessary provisions and furnitures as may be for the advancement and education of youth in all manner of good literature, arts, and sciences.

"And, further, be it ordered by this Court and the authority thereof, that all the lands, tenements, or hereditaments, houses, or revenues, within this jurisdiction, to the aforesaid President or College appertaining, not exceeding the value of five hundred pounds per annum, shall from henceforth be freed from all civil impositions, taxes, and rates; all goods to the said Corporation, or to any scholars thereof, appertaining, shall be exempted from all manner of toll, customs, and excise whatsoever; and that the said President, Fellows, and scholars, together with the servants, and other necessary officers to the said President or College appertaining, not exceeding ten,—viz., three to the President and seven to the College belonging,—shall be exempted from all personal civil offices, military exercises or services, watchings and wardings; and such of their estates, not exceeding one hundred pounds a man, shall be free from all country taxes or rates whatsoever, and none others.

"In witness whereof, the Court has caused the seal of the Colony to be hereunto affixed. Dated the one and thirtieth day of the third month, called May, anno 1650.

["L. S.]

THO. DUDLEY,
Governor."³

"AN APPENDIX TO THE COLLEGE CHARTER, GRANTED BY AN
ACT OF THE GENERAL COURT OF THE COLONY,
PASSED A. D. 1657.

"At a General Court held at Boston, the 14th of October, 1657.

"In answer to certain proposals presented to this Court by the Overseers of HARVARD COLLEGE, as an appendix to the College Charter, it is ordered,—

"The Corporation shall have power, from time to time, to make such orders and by-laws, for the better ordering, and carrying-on of the work of the College, as they shall see cause, without dependence upon the consent of the Overseers foregoing. *Provided always*, that the Corporation shall be responsible unto, and those orders and by-laws shall be alterable by, the Overseers, according to their discretion.

"And when the Corporation shall hold a meeting, and agreeing with college servants, for making of orders and by-laws, for debating and concluding of affairs concerning the profits and revenues of any lands or gifts, and the disposing thereof (pro-

³The above is a copy of the original Charter, engrossed on parchment, under the signature of Governor Dudley, with the Colony seal appendant, in the custody of the President and Fellows of Harvard College. The Charter, varying slightly in phraseology, is also contained in the *Records of the General Court*, Vol. IV, page 10.

vided that all the said disposals be according to the will of the donors), for management of all emergent occasions, for the procuring of a general meeting of the Overseers and Society in great and difficult cases, and in cases of non-agreement, and for all other college affairs to them pertaining,—in all these cases the conclusion shall be valid, being made by the major part of the Corporation, the President having a casting vote. *Provided always*, that, in these things also, they be responsible to the Overseers as aforesaid.

“And in case the Corporation shall see cause to call a meeting of the Overseers, or the Overseers shall think good to meet of themselves, it shall be sufficient unto the validity of college acts, that notice be given to the Overseers in the six towns mentioned in the printed law anno 1642, when the rest of the Overseers, by reason of the remoteness of their habitations, cannot conveniently be acquainted therewith.”⁴

The Corporation and the Board of Overseers remain to the present time the governing powers of the University; and this charter with its appendix is now in force precisely as first drafted, notwithstanding that several attempts were made, during the first fifty years of its existence, to alter it or to substitute another in its place. Several new charters which would have essentially changed the organization of the College passed both branches of the Colonial Legislature, but failed to receive the sanction of the King or Governor, and none of the proposed changes ever actually went into operation. The last attempt to obtain a new college charter from the Crown was in 1700, when a draft of a charter was prepared “to be solicited for to his Majesty,” which passed both branches of the Legislature, but was never presented to the King.

After the constitution of the College had been for a number of years in this unsettled condition, the General Court in 1707 passed the following vote, reasserting the integrity and force of the charter of 1650, and it remains “the venerable source of collegiate authority” to this day.

“EXTRACT FROM A RESOLVE OF THE PROVINCIAL GENERAL COURT, PASSED A. D. 1707, DECLARING THE COLLEGE CHARTER OF 1650 NOT REPEALED, AND DIRECTING THE PRESIDENT AND FELLOWS OF THE COLLEGE TO EXERCISE THE POWERS GRANTED BY IT.

“At a Great and General Court for her Majesty’s Province of the Massachusetts Bay, begun and held at Boston upon the 28th of May, 1707, and continued by several prorogations unto the 29th of October following, being the third session.

⁴This act is taken from the *Records of the General Court*, Vol. IV, page 265.

"IN COUNCIL

"*Thursday, December 4, 1707.*

"And inasmuch as the first foundation and establishment of that House (Harvard College, in Cambridge), and the government thereof, had its origin from an act of the General Court, made and passed in the year 1650, which has not been repealed or nulled,—the President and Fellows of the said College are directed, from time to time, to regulate themselves according to the rules of the Constitution by the said Act prescribed, and to exercise the powers and authorities thereby granted for the government of that House, and the support thereof.

"*Saturday, December 6, 1707.*

"The Representatives returned the Vote passed in Council, the 4th current, referring to the College, with their concurrence thereunto.

"By his Excellency the Governor, consented to,

"JOSEPH DUDLEY."⁵

In 1780, when a Constitution was framed for the new Commonwealth of Massachusetts, the following Articles were introduced, securing to the President and Fellows of Harvard College the perpetual enjoyment of all their vested rights and powers, and providing for the organization of the Board of Overseers.

"THE ARTICLES OF THE CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS, CONFIRMING AND SECURING TO HARVARD COLLEGE THE PERPETUAL POSSESSION AND ENJOYMENT OF ALL ITS ESTATES, RIGHTS, POWERS, AND PRIVILEGES.

"CHAPTER V.

"SECTION I.—*The University*

"ARTICLE 1.—Whereas our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of HARVARD COLLEGE, in which University many persons of great eminence have, by the blessing of God, been initiated in those arts and sciences which qualified them for public employments both in Church and State; and whereas the encouragement of arts and sciences and all good literature tends to the honor of God, the advantage of the Christian religion, and the great benefit of this and the other United States of America,—It is declared that the *President and Fellows of Harvard College* in their corporate capacity, and their successors in that capacity, their officers and servants, shall have,

⁵This resolve is taken from the *Records of the General Court*, Vol. VIII, page 344.

hold, use, exercise, and enjoy all the powers, authorities, rights, liberties, privileges, immunities, and franchises which they now have, or are entitled to have, use, exercise, and enjoy; and the same are hereby ratified and confirmed unto them, the said President and Fellows of Harvard College, and to their successors, and to their officers and servants respectively, for ever.

“ART. 2.—And whereas there have been at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies, and conveyances, heretofore made either to Harvard College, in Cambridge, in New England, or to the President and Fellows of Harvard College, or to the said College by some other description, under several charters successively,—It is declared that all the said gifts, grants, devises, legacies, and conveyances are hereby for ever confirmed unto the President and Fellows of Harvard College, and to their successors in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, devisor or devisors.

“ART. 3.—And whereas, by an Act of the General Court of the Colony of Massachusetts Bay, passed in the year one thousand six hundred and forty-two, the Governor and Deputy-Governor for the time being, and all the magistrates of that jurisdiction, were with the President, and a number of the clergy in the said Act described, constituted the Overseers of Harvard College; and it being necessary, in this new Constitution of government, to ascertain who shall be deemed successors to the said Governor, Deputy-Governor, and magistrates,—It is declared that the Governor, Lieutenant-Governor, Council, and Senate of this Commonwealth are and shall be deemed their successors; who with the President of Harvard College for the time being, together with the ministers of the Congregational churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said Act, shall be, and hereby are, vested with all the powers and authority belonging or in any way appertaining to the Overseers of Harvard College. *Provided*, that nothing herein shall be construed to prevent the Legislature of this Commonwealth from making such alterations in the government of the said University as shall be conducive to its advantage, and the interests of the republic of letters, in as full a manner as might have been done by the Legislature of the late Province of the Massachusetts Bay.”

On February 12, 1814, the Senate and House of Representatives of the State of Massachusetts passed the following Act, relating to the Power of the President and Fellows of Harvard College of holding Real Estate:—

“AN ACT

“TO ENLARGE THE POWER OF THE PRESIDENT AND FELLOWS OF HARVARD COLLEGE OF HOLDING REAL ESTATE.

“Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same:

“That the President and Fellows of Harvard College and their successors in office, be and they are hereby authorized to purchase, accept, take and hold lands, tenements and hereditaments within this Commonwealth to the clear yearly value of twelve thousand dollars, in addition to what they now are by law authorized to hold, and in addition to the public buildings of said University occupied by the students and for other public purposes.”

Passed 12th February, 1814.

The previous limitations on the power of the President and Fellows to accept and hold real estate were removed March 13, 1889, by the following Act of the Senate and House of Representatives of Massachusetts:—

“AN ACT

“TO ENLARGE THE POWER OF THE PRESIDENT AND FELLOWS OF HARVARD COLLEGE TO HOLD TAXABLE REAL ESTATE.

“Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

“SECTION 1. The President and Fellows of Harvard College may accept, take and hold, and may sell at their discretion, unless expressly forbidden by the terms of gift, any real estate within or without this Commonwealth which has been or may hereafter be given or devised to them for educational purposes; and they may, from time to time, invest any portion of the property held by them, as they may think judicious, in productive real estate within the Commonwealth, and may sell any such estate at their discretion: *provided, however,* that nothing herein contained shall be construed to give the said corporation any claim to greater exemption from taxation than it now has under the constitution and laws of this Commonwealth.

“SECTION 2. This Act shall take effect upon its passage.”

Approved March 13, 1889.

It remains to notice certain changes in the constitution of the Board of Overseers, relating to eligibility to office, mode of appointment or election, and the connection between the College and the Commonwealth.

The first important change occurred in the year 1810. Under the Act of 1642 and the clauses of the State Constitution of

1780, the Board was composed of the Governor, Lieutenant-Governor, Council, and Senate of Massachusetts, and the Congregational ministers of certain specified towns. In the early days of the College this enumeration included almost all the educated men of the Colony; but in the course of time other classes rose to power and influence, and it became desirable that the Overseers should be able to place among their number other persons eminently qualified for such a position, and that the right to a seat at the Board should be no longer incidental and casual, but be made elective and permanent. Many of the members of the Senate also desired to be relieved of their duties towards the College.⁶ Accordingly in March, 1810, an Act was passed by the State Legislature entitled "An Act to alter and amend the Constitution of the Board of Overseers of Harvard College," and consisting of six sections. By the first it is enacted that "The Governor, Lieutenant-Governor, Counsellors, President of the Senate, and Speaker of the House of Representatives of the Commonwealth, and the President of Harvard College for the time being, with fifteen ministers of Congregational churches and fifteen laymen, all inhabitants within the State, to be elected as is hereafter mentioned, shall for ever hereafter constitute the Board of Overseers of Harvard College."

The second and fifth sections provide for the election of the ministers and laymen, the said elections being made by the ballots of the major part of the Overseers present at a legal meeting.

The third section relates to the choice and duties of a Secretary, the time and manner of meeting, and the duty of presiding at the meetings.

The fourth section specifies when the seat of a minister or of a member shall become vacant, and confers the power of removal from office in certain cases.

The sixth and last section is as follows:—

"This Act shall be in force when the Overseers of Harvard College, as heretofore constituted, and the President and Fellows of Harvard College, shall agree to accept the provisions in this Act contained."

The principle that the Commonwealth could not change the constitution of the College, without the consent of the Corporation and Overseers, was thus distinctly recognized; and the chartered rights of the College were respected and maintained, at the same time that a more efficient organization was established for the Board of Overseers.

The provisions of this Act were accepted by the President and Fellows on the 16th of March, 1810; and by the Overseers on the 12th of April, in the same year.

⁶See Quincy's *History of Harvard University*, ii, 294.

In 1812, the Legislature, in direct opposition to a memorial from the Corporation, and without making any provision for the consent of the Corporation or Overseers, repealed this Act, and restored the former organization of the Board; but in 1814, the Act of 1812 was itself repealed, and that of 1810 re-enacted with the addition that the Senate of the Commonwealth should in future form part of the Board of Overseers. This Act also contained the provision that it should not take effect until it was accepted by the Overseers and by the President and Fellows of Harvard College. The Act was accepted by both Boards in March of the same year.

Until 1834, clergymen, to be eligible to the Board of Overseers, must be Congregationalists; but an Act was passed by the Legislature of that year opening the Board to clergymen of all denominations,—the Act to take effect whenever accepted by both branches of the College government. It was accepted by them in 1843.

Another Act, “to change the organization of the Board of Overseers,” was passed in 1851. It made the Board to consist of,—

“The Governor, Lieutenant-Governor, President of the Senate and Speaker of the House of Representatives of the Commonwealth, the Secretary of the Board of Education, and the President and Treasurer of Harvard College, for the time being, together with thirty other persons, as hereinafter defined and described, and no others.”

The Act also divided the Board into six equal classes, to be elected and to go out of office in rotation, as described in the following sections:

“SECTION 3. The thirty persons, who, in addition to the *ex officio* members thereof, now constitute the Board of Overseers, shall be divided into three classes of ten each, by lot or otherwise, as they themselves may determine; and the persons of the first class shall go out of office on the day of the next annual meeting of the General Court, and their places be supplied by joint ballot of the Senators and Representatives of the Commonwealth, assembled in one room; and the persons of the second class shall go out of office on the day of the annual meeting of the General Court, which will be in the year one thousand eight hundred and fifty-three, and their places be supplied in like manner by joint ballot of the Senators and Representatives; and the persons of the third class shall go out of office on the day of the annual meeting of the General Court, which will be in the year one thousand eight hundred and fifty-four, and their places be supplied in like manner by joint ballot of the Senators and Representatives; *Provided* that the persons of each of the said

outgoing classes shall continue in office for two months after the day of the said annual meeting of the General Court, unless their successors shall have been sooner chosen by the Senators and Representatives.

"SECTION 4. When the Board of Overseers shall have been wholly renewed in the manner prescribed in the foregoing section, the members thereof shall be divided into six equal classes, by subdivision of the previous classes into two each, according to lot or otherwise, as the Board may determine, and having regard to seniority of service among the said previous classes in arranging the order of precedence of the new series; and the said six classes shall thereafter go out of office in rotation, and in order of precedence as thus defined, one at each successive annual meeting of the General Court, and their places be supplied by joint ballot of the Senators and Representatives."

"SECTION 7. No member of the General Court which elects shall be eligible to a place in the said Board of Overseers; and no person shall be re-eligible for more than one term immediately succeeding that for which he shall have been first elected."

This Act was not to go into effect until "the Board of Overseers, as heretofore constituted, and the President and Fellows of Harvard College respectively, at meetings held for that purpose during the present session of the General Court, shall by vote have assented to the same." The two Boards concurred as required.

Meanwhile an opinion was everywhere gaining ground that it would be better for the community and the interests of learning, as well as for the University, if the power to elect the Overseers were transferred from the Legislature to the graduates of the College. A bill to this effect was introduced into the Senate in 1854, which passed through most of the preliminary stages, but failed to be enacted; partly, as it was thought at the time, from the pressure of business at the close of the session. The purpose was finally carried out in 1865, by the passage of the following Act in relation to the Board of Overseers of Harvard College:—

"AN ACT

"IN RELATION TO THE BOARD OF OVERSEERS OF HARVARD COLLEGE.

"SECTION 1. The places of the successive classes in the Board of Overseers of Harvard College, and the vacancies in such classes, shall hereafter be annually supplied by ballot of such persons as have received from the College a degree of Bachelor of Arts,

or Master of Arts, or any honorary degree, voting on Commencement Day in the city of Cambridge; such election to be first held in the year eighteen hundred and sixty-six; *provided, however*, that no member of the Corporation, and no officer of government or instruction in said College, shall be eligible as an Overseer, or entitled to vote in the election of Overseers; and *provided, further*, that no person who has received from said College the degree of Bachelor of Arts shall be entitled to vote for Overseers before the fifth annual election after the graduation of his class.

"SECTION 2. The Board of Overseers shall annually appoint one principal and two or more assistant-inspectors of polls, who shall, on Commencement Day, from the hour of ten in the forenoon to the hour of four in the afternoon, at some place in said city of Cambridge, fixed by said Board, receive the votes for Overseers, and they shall sort and count such votes, and make public declaration thereof, after the closing of the polls; and said inspectors shall be provided with a complete list of the persons qualified to vote at such election, and no person shall vote until the inspectors find and check his name upon such list. The names of the persons voted for, the number of votes received for each person, and the vacancy or place in said Board for which he is proposed, shall be entered in words at length, by said inspectors, upon a record kept by them for that purpose, which shall, after such election, be forthwith made up, signed, and delivered by them to the Board of Overseers. The persons who shall receive the highest number of votes for the places or vacancies in said Board shall, to the number of Overseers to be elected, be deemed and shall be declared by said Board elected to be members thereof.

"SECTION 3. The Board of Overseers shall give notice of the place of the polls, the hours during which they are open, and the number of Overseers to be elected, by publishing the same at least ten days before Commencement Day in some newspaper printed in the city of Boston.

"SECTION 4. The terms of office of the existing classes of Overseers are extended to the close of Commencement Day of the year in which such terms severally expire; the terms of office of the classes hereafter elected shall successively expire at the close of Commencement Day each year in their order; and the persons elected Overseers on any Commencement Day shall supply the places of the class of Overseers which goes out of office at the close of that day, and the vacancies then existing in said Board.

"SECTION 5. Whenever there shall be a failure on Commencement Day to supply any places or vacancies in the Board of Overseers, the same may be filled by vote of the remaining

Overseers; and any person elected to fill a vacancy shall be deemed to be a member of and to go out of office with the class to which his predecessor belonged.

"SECTION 6. The Governor, Lieutenant-Governor, President of the Senate, Speaker of the House of Representatives, and Secretary of the Board of Education shall not be *ex officio* members of the Board of Overseers of Harvard College after this Act shall be in force.

"SECTION 7. This Act shall be in force when the Board of Overseers and the President and Fellows of Harvard College, respectively, at meetings held for that purpose, shall by vote have assented to the same.

"SECTION 8. This Act shall not be construed as in the nature of a contract or a charter, but may at any time be repealed at the pleasure of the Legislature." [April 28, 1865.]

This Act, having been duly assented to by the Overseers on the 21st of September, 1865, and by the President and Fellows on the 15th of December of the same year, is now the law.

In the Act of 1810 it is specified that the members of the Board of Overseers shall be "all inhabitants within the State." This restriction was removed by the following Act in 1880:—

"AN ACT

"TO PROVIDE FOR THE ELIGIBILITY OF PERSONS NOT INHABITANTS OF THIS COMMONWEALTH AS OVERSEERS OF HARVARD COLLEGE.

"SECTION 1. Persons not inhabitants of this Commonwealth and otherwise qualified shall be eligible as Overseers of Harvard College.

"SECTION 2. This Act shall take effect on its acceptance by the President and Fellows and by the Board of Overseers of Harvard College, respectively, at meetings held for that purpose." [March 5, 1880.]

This Act was accepted by the President and Fellows on May 31, 1880, and by the Overseers on June 2, 1880.

The method of election of Overseers of Harvard College, described in Section 2 of the Act of 1865, was amended by the following Act in 1889:—

"AN ACT

"TO AMEND CHAPTER 173 OF THE ACTS OF THE YEAR 1865 IN RELATION TO THE BOARD OF OVERSEERS OF HARVARD COLLEGE.

"Be it enacted, etc., as follows:

"SECTION 1. Section 2 of Chapter 173 of the Acts of the year 1865 is amended by striking out all of said section after the word

"list" in the eleventh line thereof, and by inserting in place thereof the following: The names of the persons voted for, and the number of votes received for each person, shall be entered in words at length by said inspectors upon a record kept by them for that purpose, which shall, after such election, be forthwith made up, signed and delivered by them to the Board of Overseers. The persons who shall receive the highest number of votes for the places in said board shall, to the number of overseers to be elected, be deemed and declared by said board elected to be members thereof for the following terms, to wit: The five persons receiving the highest number of votes shall be declared elected to the class having the longest term, and in case any vacancy or vacancies exist in any other class or classes, the persons voted for shall be declared elected to such vacancy or vacancies according to the number of votes received by them, the person or persons receiving the next highest number of votes being declared elected to the class having the next longest term to run, and so on in order for other vacancies. In case, by reason of a tie, it should be uncertain to which class any persons shall be declared elected, the Board of Overseers shall by vote determine to which classes the persons receiving the same number of votes shall be assigned.

"SECTION 2. This Act shall take effect upon its passage."

This Act was approved March 19, 1889.

"AN ACT

"RELATIVE TO THE BOARD OF OVERSEERS OF HARVARD COLLEGE.

"Be it enacted, etc., as follows:

"SECTION 1. The President and Fellows of Harvard College and the Board of Overseers of said College, acting separately at meetings called for that purpose, may, after the expiration of three years from the date of the acceptance of this Act, as provided for in Section 2, determine from time to time by concurrent vote whether any, and, if any, what degrees issued by said College other than those mentioned in the first section of chapter 173 of the Acts of the year 1865 shall entitle the recipients thereof to vote for Overseers to the same extent and under the same restrictions to and under which recipients of the degree of Bachelor of Arts from said College may now so vote.

"SECTION 2. This Act shall take effect when the Board of Overseers and the President and Fellows of Harvard College, respectively, at meetings held for that purpose, shall by vote assent to the same." [Approved March 27, 1902.]

This Act was assented to by the President and Fellows on

September 23, 1902, and by the Board of Overseers on October 15, 1902.

EXTENSION OF THE RIGHT TO VOTE FOR OVERSEERS

Acting under the authority conferred by the Act of 1902, the Board of Overseers on April 10, 1907, and the President and Fellows on April 29, 1907, adopted the following vote:—

“That this Board hereby determines that the degrees conferred by the Governing Boards of the University, upon the recommendation of the Faculty of Arts and Sciences, upon the graduates of the Lawrence Scientific School, of the Graduate School of Arts and Sciences, and of the Graduate School of Applied Science, and the degree of Bachelor of Science conferred after residence in Harvard College, shall entitle the recipients thereof to vote for Overseers to the same extent and under the same restrictions to and under which recipients of the degree of Bachelor of Arts of said College may now so vote.”

Acting under the authority conferred by the Act of the Legislature of Massachusetts, Chapter 243 of the Acts of 1902, the President and Fellows on November 29, 1915, and the Board of Overseers on January 10, 1916, adopted the following concurrent vote:—

“That the recipients of all degrees heretofore or hereafter granted by Harvard College, other than the recipients of the degrees of Bachelor of Arts, Master of Arts, and Honorary Degrees, shall be entitled to vote for Overseers to the same extent to which recipients of the degree of Bachelor of Arts may now so vote and under the same restrictions.”

“AN ACT

“RELATIVE TO THE METHOD OF ELECTION OF MEMBERS OF THE
BOARD OF OVERSEERS OF HARVARD COLLEGE

“Be it enacted, etc., as follows:

“SECTION 1. The President and Fellows of Harvard College and the Board of Overseers of said College, acting separately at meetings called for the purpose, may from time to time, by concurrent vote, adopt rules and regulations fixing the method of voting for members of the Board of Overseers and the time and place or places when and where the annual election for members of said Board of Overseers shall be held, and determine the date or dates on which such rules and regulations shall be effective, after which date or dates so fixed such rules and regulations shall supersede any statutory provisions or rules or regulations with which they are in conflict; provided that noth-

ing herein contained shall be construed to affect the eligibility of any person to be an Overseer or to vote in any election of Overseers or the method of determining such eligibility.

"SECTION 2. This act shall take effect when the Board of Overseers and the President and Fellows of Harvard College, respectively, at meetings held for that purpose, shall by vote assent to the same." [Approved March 31, 1921.]

This Act was assented to by the President and Fellows on September 19, 1921, and by the Board of Overseers on September 26, 1921.

JUDICIAL DECISIONS

Tax Exemption: Location and Use of Property. The estate of the corporation of Harvard College, in the hands of its agents, wheresoever situated within the state, was exempted from public taxes by the annual tax acts. Thus a house, tanyard, and 5 acres of land situated in Charlestown were exempt. *President and Fellows of Harvard College v. Kettell*, 16 Mass. 204 (1819). Under the act of 1650, exempting from taxation all lands, tenements, and revenues of Harvard College, not exceeding the value of 500 pounds per annum, the lands first acquired by the college before their annual income amounted to 500 pounds, would never be liable to taxation so long as they were owned by the college; and are exempt in the hands of the lessee, as though in the immediate possession of the college. *Nahum Hardy v. the Inhabitants of Waltham*, 7 Pickering (24 Mass.) 108 (1828).

Tax Exemption: Houses Leased to Professors. A dwelling house built by the college within the college yard, and leased to a professor as a residence for himself and his family at an annual rental, was not exempt from taxation under clause 2 of section 5 of chapter 7 of the Revised Statutes of Massachusetts, exempting real estate of the college occupied by one of its officers. The decision would have been different if the occupant of the house had paid no rent and acquired no leasehold estate. *Benjamin Pierce v. the Inhabitants of Cambridge*, 2 Cushing (56 Mass.) 611 (1849).

Tax Exemption: Local Assessments. An assessment upon lands of Harvard College of part of the expense of altering a

street, proportional to the benefit received can not lawfully be made, because the charter of 1650 exempts from all civil impositions the lands of the college not exceeding a certain annual value; and if at the time when the land was acquired by the college, before the adoption of the Constitution of the Commonwealth, it was within the limit of the exemption and continued thus until the Constitution was adopted, the college is entitled to continue to hold it exempt. It is immaterial that the annual value of the land now greatly exceeds the limit and that the college holds other lands also exceeding the limit in value, aside from lands exempted under the general tax act. *President and Fellows of Harvard College v. Board of Aldermen of the City of Boston*, 104 Mass. 470 (1879).

Tax Exemption: Students' Clubs and President's Residence. Real estate owned and provided by the college without a lease and without rental for the use of students who club together to secure food at cost is exempt from taxation under clause 3 of section 5 of chapter 11 of the public statutes, as amended by chapter 465 of the statutes of 1889. The same is true of the house occupied rent-free by the president, and those occupied likewise by professors, all being kept in repair by the college. Most of the lower portions of such houses are used for meetings and exercises in connection with the college, and for different purposes incident to the duties of the occupants; the other portions being used as private dwellings, rent-free. *President and Fellows of Harvard College v. Assessors of Cambridge*, 175 Mass. 145, 55 N. E. 844, 48 L. R. A. 547 (1900).

Administration of Trust for Engineering Education. Funds amounting to \$1,000,000 were received from a private donor for the endowment of the promotion of applied science. The donor stipulated that if Harvard failed to accept the trust, the gift should go to a new Massachusetts corporation, to be established to receive and apply the endowment. Subsequently, Harvard University made an agreement with the Massachusetts Institute of Technology for the transfer of engineering instruction and research from the university to the institute, and the application of not less than three-fifths of the net income of the above mentioned endowment to the institute. This agreement was held invalid and unlawful insofar as it affected the

endowment in question. *President and Fellows of Harvard College v. Attorney General*, 228 Mass. 396, 117 N. E. 903 (1917).

Extent of Residuary Bequest. Count Rumford in his lifetime made a gift to the American Academy of Arts and Sciences as a trust, the interest thereon to be paid biennially as a premium to the author of such discovery or improvement on heat or light, published in America during the preceding two years, as should in their opinion tend most to promote the good of mankind. By his will he bequeathed the residue of his estate to Harvard College, to found a professorship in the physical and mechanical sciences. It having become impractical to carry out his intent respecting his gift to the Academy in the precise mode prescribed it was held that Harvard College had no claim to any part of this fund; but that the Academy could apply the income of the fund to purposes closely related, but not precisely the same as the purpose stipulated by the donor, pursuant to a scheme reported by a master in chancery. *American Academy of Arts v. Harvard College*, 12 Gray (78 Mass.) 582 (1832).

Liability for Injury to Employee of Tenant. The college leased a business building to a tenant, agreeing to furnish and operate an elevator therein for transporting merchandise. A servant of the tenant was injured while riding on the elevator with some merchandise, through the alleged negligence of the servant of the college who was operating the engine which propelled the elevator. It was held that the question of whether it was properly incident to the transportation of goods that a man should ride with the goods, and whether the injured person was careless under the circumstances, should be left to the jury. *Stewart v. President and Fellows of Harvard College*, 12 Allen (94 Mass.) 58 (1866).

Interpretation of Will. Where a will provided that \$50,000 should go to Harvard College, reciting, at length, the trusts under which it should be held, a will of the sister of testator that certain gifts should go to Harvard College subject to the trusts and in all respects as if it were part of, and an addition to, the property described in the will of her brother, by reference to such will, without reciting at length its provisions in regard to it, adopted her brother's will as hers for the disposition of

her property. *Dexter v. President and Fellows of Harvard College*, 176 Mass. 192, 57 N. E. 371 (1900).

Appointment of Trustee of Bequest. A devise of a house of Revolutionary architecture, containing a collection of household antiques constituting a sort of museum, and standing in the midst of ample grounds adapted for use as a park and for experimentation and instruction in Botany, was a gift for public educational purposes, though the will stipulated that the house should never be dismantled, but should stand forever as a memorial to the family of the donor. Hence when the Essex Institute, as designated trustee, refused the trust, the court appointed trustees to administer it "as nearly as possible to the intent and purpose" of the testator. *Richardson v. Harvard College*, 208 Mass. 311, 94 N. E. 262, 21 Ann. Cas. 1158 (1911).

Exemption of Legacy from Ohio Inheritance Tax. A bequest of \$73,000 by a resident of Ohio to Harvard College, under a will probated in Ohio, was held wholly exempt from the Ohio succession tax, under Section 5332, *General Code of Ohio*, which exempts property bequeathed to "public institutions of learning", while used "exclusively for . . . such purposes." Two Justices dissented, on the ground that Section 5332, enacted in 1900, was automatically repealed by Article XII, Section 7 of the Constitution, adopted in 1912, which provides no exemptions other than "a portion of each estate not exceeding \$20,000." The question of the application of the exemption clause to a foreign educational corporation, which has occasioned considerable conflict of judicial opinion in many states, was not discussed. *President and Fellows of Harvard College v. State of Ohio*, 106 O. S. 303, 140 N. E. 189 (1922).

Reversion of Land in Ohio to Heirs of Donor. A resident of Ohio bequeathed to the Peabody Museum (later merged with Harvard College) a tract in Ohio known as the Ancient cemetery, stipulating that it should be forever held in trust "for scientific purposes for the preservation of the remains and relics of said cemetery." The museum accepted the trust and took many prehistoric skeletons and artifacts from the tract, transporting them to Cambridge, Massachusetts, for preservation and exhibition, and completely exhausted the archeological

resources of the tract. Harvard College thereafter sought a decree to permit it, as successor to the museum, to sell the tract and devote the proceeds to the maintenance of the museum in Cambridge. A decree of the U. S. District Court denying the petition and allowing the tract to revert to the donor's heirs was affirmed by the U. S. Circuit Court of Appeals, in the following language: "It is unnecessary . . . to determine whether the Peabody Museum had or had not the right to remove these relics . . . If it had such right, then the purposes of the trust had been fully accomplished. If it had no such right, then by its own act it made the further performance of the trust impossible. In either event this land, as land, can no longer serve the purposes of the trust, and the title thereto necessarily reverts." *President and Fellows of Harvard College v. Jewett*, 11 Fed. (2d) 119 (1925).

UNIVERSITY OF ILLINOIS

URBANA, ILLINOIS

A state university incorporated in 1867 as the Illinois Industrial University (changed to the University of Illinois, 1885). The first departments of instruction included Literature and the Arts, Classical and Scientific studies, Agriculture, Engineering, Military Science and Tactics. Colleges and schools were founded later as follows: Graduate School (1892), Summer Session (1894), School of Music (1897), School of Library Economy (1897), College of Law (1896), College of Liberal Arts and Sciences (1913), College of Commerce and Business Administration (1915), College of Education (1918), School of Journalism (1927), College of Fine and Applied Arts (1931). The Chicago College of Pharmacy, founded in 1859, became the School of Pharmacy of the University of Illinois (1896). The College of Physicians and Surgeons of Chicago became affiliated (1897) and absorbed (1913), becoming the College of Medicine. The School of Dentistry was organized as a department of the College of Medicine (1901) and became the College of Dentistry (1905). The principal sources of income are state appropriations, lands, and Federal grants. The total income from the state in 1930-31 was nearly \$7,080,000. This is one of the five American state universities whose governing board members are elected by popular vote.

LAWS RELATING TO THE UNIVERSITY OF ILLINOIS

STATUTORY PROVISIONS¹

AN ACT to provide for the organization and maintenance of the University of Illinois. [Approved February 28, 1867. L. 1867, p. 123; title as amended by act approved June 30, 1927. L. 1927, p. 873.]

22. Trustees—Powers.] SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That it shall be the duty of the Governor of this state within ten days from the passage of this act, to appoint² five trustees, resident in each of the judicial grand divisions of this state, who, together with one additional trustee, resident in each of the congressional districts of this state, to be appointed in like manner, with their associates and successors, shall be a body corporate and politic, to be styled "The Board of Trustees of the Illinois Industrial University;" and by that name and style shall have perpetual succession, have power to contract and be contracted with, to sue and be sued, to plead and be impleaded, to acquire, hold, and convey real and personal property; to have and use a common seal, and to alter the same at pleasure; to make and establish by-laws, and to alter or repeal the same as they shall deem necessary, for the management or government, in all its various departments and relations, of the Illinois Industrial University, for the organization and endowment of which provision is made by this act. Said appointments to be subject to approval or rejection by the senate at its next regular session thereafter, and the appointees to be, and they are hereby authorized to act as trustees as aforesaid, until their successors shall be appointed by the governor and such appointment shall be approved by the senate.

23. Term of office—Vacancies—Executive committee.] SECTION 2. The members of the board of trustees, and their successors, shall hold their office for the term of six years each: Provided, that at the first regular meeting of said board, the said members shall determine, by lot, so that, as nearly as may be, one-third shall hold their office for two years, one-third for four years, and one-third for six years from the first day of said meeting. The Governor, by and with the advice and consent of

¹*Revised Statutes of Illinois* (Smith-Hurd), 1931, Chap. 144, Sections 22–48. Sections relating to "free scholarships" and to the establishment of departments of engineering, veterinary medicine, journalism, etc., have been omitted. (See Smith-Hurd, pp. 2905–06.)

²Amended, 1873 and 1887. See Section 41 of this compilation for present law.

the Senate, shall fill all vacancies which may at any time occur by expiration of term of office, or otherwise, in said board, by appointment of suitable persons resident in the respective grand divisions and congressional districts in which such vacancies may occur. Said board of trustees may appoint an executive committee of their own number, who when said board is not in session, shall have the management and control of the same, and for that purpose have and exercise all the powers hereby conferred on said board which are necessary and proper for such object.³

24. Departments.] SECTION 3. In case the board of trustees shall at any time determine to establish a branch or department of said university at any points elected by them, such branch or department shall be under the control of the members of said board residing in the grand division and congressional district where said branch shall be located, unless otherwise ordered by said board of trustees: Provided, that no portion of the funds resulting from the congressional grant of land for the endowment of said University, or from any donation now or hereafter to be made by the county, city or town at or near which the University is located; and no portion of the interest or proceeds of either of said funds shall ever be applied to the support of any branch or department located outside of the county where-in said University is located by this act.

25. Election of President.] SECTION 4. The board of trustees shall elect a regent who shall be charged with the general supervision of the educational facilities and interests of the university. Said regent shall be known as President of the University and his term of office shall be at the pleasure of the board of trustees. [As amended by act approved June 30, 1927. L. 1927, p. 873.]⁴

26. Treasurer—Corresponding secretary.] SECTION 5. At the first, and at each biennial meeting thereafter, it shall be the duty of the board to appoint a treasurer, who shall not be a member of the board, and who shall give bonds, with such security as the board of trustees shall deem amply sufficient to

³Amended 1873 and 1887. See Section 42 of this compilation for present law.

⁴The original wording of this section (Section 4, Act of 1867) was as follows:

Section 4. The first regular meeting of the board of trustees shall be held at such place as the governor may designate, on the second Tuesday in March, A. D. 1867, at which meeting they shall elect a regent of the university, who, together with the governor, superintendent of public instruction and president of the state agricultural society, shall be, *ex officio*, members of said board of trustees. Said regent, if present, shall preside at all meetings of the board of trustees and of the faculty, and shall be charged with the general supervision of the educational facilities and interests of the university. His term of office shall be two years, and his compensation shall be fixed by the board of trustees.

guard the University from danger of loss or diminution of the funds intrusted to his care. The trustees may appoint, also, a recording secretary, whose duty it shall be to keep faithful record of the transactions of the board of trustees, and prepare the same for publication in an annual report. The said treasurer and recording secretary to receive such compensation as the trustees may fix, and to be paid in the same manner as the teachers and other employees of the University are paid.

28. Powers of Trustees.] SECTION 7. The trustees shall have power to provide the requisite buildings, apparatus, and conveniences; to fix the rates for tuition; to appoint such professors and instructors, and to establish and provide for the management of such model farms, model art, and other departments and professorships, as may be required to teach, in the most thorough manner, such branches of learning as are related to agriculture and the mechanic arts, and military tactics, without excluding other scientific and classical studies. They may accept the endowments of voluntary professorships or departments in the University, from any person or persons or corporations who may proffer the same, and, at any regular meeting of the board, may prescribe rules and regulations in relation to such endowments and declare on what general principles they may be admitted: Provided, that such special voluntary endowments or professorships shall not be incompatible with the true design and scope of the act of congress, or of this act; and they shall, as far as practicable, arrange all the regular and more important courses of study and lectures in the University, so that the students may pass through and attend upon them during the six autumn and winter months, and be left free to return to their several practical arts and industries at home during the six spring and summer months of the year, or to remain in the University and pursue such optional studies or industrial avocations as they may elect: Provided, that no student shall at any time be allowed to remain in or about the University in idleness, or without full mental or industrial occupation: And provided further, that the trustees, in the exercise of any of the powers conferred by this act, shall not create any liability or indebtedness in excess of the funds in the hands of the treasurer of the University at the time of creating such liability or indebtedness, and which may be specially and properly applied to the payment of the same.

29. Admission.] SECTION 8. No student shall be admitted to instruction in any of the departments of the University who shall not have attained to the age of fifteen (15) years, and who shall not previously undergo a satisfactory examination in each of the branches ordinarily taught in the common schools of the state.

30. Counties to have honorary scholarships.] SECTION 9. Each county in this state shall be entitled to one honorary scholarship in the University, for the benefit of the descendants of the soldiers and seamen who served in the armies and navies of the United States during the late rebellion—preference being given to the children of such soldiers and seamen as are deceased or disabled; and the board of trustees may, from time to time, add to the number of honorary scholarships when in their judgment, such additions will not embarrass the finances of the University; nor need these additions be confined to the descendants of soldiers and seamen; such scholarships to be filled by transfer from some of the common schools of said county, of such pupils as shall, upon public examination, to be conducted as the board of trustees of the University may determine, be decided to have attained the greatest proficiency in the branches of learning usually taught in the common schools, and who shall be of good moral character, and not less than fifteen (15) years of age. Such pupils, so elected and transferred, shall be entitled to receive, without charge for tuition, instruction in any or all departments of the University for a term of at least three (3) consecutive years: Provided, said pupil shall conform, in all respects, to the rules and regulations of the University, established for the government of the pupils in attendance.

31. Faculty—Certificates of scholarship.] SECTION 10. The faculty of the University shall consist of the chief instructors in each of the several departments. The trustees, on recommendation of a majority of the faculty, may authorize the regent of the University to issue certificates of scholarship under the seal of the University, to any student of good moral character, who shall have been in attendance not less than one year, and shall have completed satisfactorily the studies of the year; which certificate shall set forth the precise attainments as ascertained by special examinations in the several branches of learning studied by such student during his attendance in the University; and on like recommendation of the faculty, the trustees may authorize the regent, as president of the University to issue diplomas to such persons as shall have completed satisfactorily the required studies, and sustained the examinations therein, conferring such literary and scientific degrees as are usually conferred by universities for similar or equivalent courses of studies, or such as the trustees may deem appropriate. All certificates and diplomas shall be in the English language, unless the student entitled to the same shall otherwise prefer. [As amended by act approved May 11, 1877. L. 1877, p. 216.]⁵

⁵The original wording of this section (Section 10, Act of 1867) was as follows:
Section 10. The faculty of the university shall consist of the chief instruc-

32. No compensation to trustees—Quorum.] SECTION 11. No member of the board of trustees shall receive any compensation for attending on the meetings of the board. At all the stated and other meetings of the board of trustees, called by the regent or corresponding secretary, or any five members of the board, a majority of the members shall constitute a quorum: Provided, all the members have been duly notified.

33. Location.] SECTION 12. It shall be the duty of the board of trustees to permanently locate said University at Urbana in Champaign County, Illinois, whenever the County of Champaign shall, according to the proper forms of law, convey or cause to be conveyed to said trustees, in fee simple, and free from all incumbrances, the Urbana and Champaign Institute buildings, grounds, and lands, together with the appurtenances thereto belonging, as set forth in the following offer in behalf of said county, to-wit:

"The undersigned, a committee appointed by the board of supervisors of Champaign County, are instructed to make the following offer to the State of Illinois, in consideration of the permanent location of the Illinois Industrial University at Urbana, Champaign County, viz.: We offer the Urbana and Champaign Institute buildings and grounds, containing about ten acres; also one hundred and sixty acres of land adjacent thereto; also, four hundred acres of land, it being part of section No. twenty-one, in township No. nineteen, north, range No. nine east, distant not exceeding one mile from the corporate limits of the City of Urbana.

"Also, four hundred and ten (410) acres of land, it being part of section No. nineteen, township No. nineteen, range No. nine east, within one mile of the buildings herein offered.

"Also, the donation offered by the Illinois Central Railroad Company of fifty thousand dollars' worth of freight over said road for the benefit of said University.

tors in each of the departments. No degrees shall be conferred nor diplomas awarded by authority of the board of trustees, or of the faculty, except that the trustees, on recommendation of the majority of the faculty, may authorize the regent of the university to issue to applicants certificates of scholarship under the seal of the university; which certificate shall, as far as practicable, set forth the precise attainments, as ascertained by special examination, of the parties applying for the same, respectively, in the various branches of learning they may have respectively studied during the attendance in the university; and every pupil who shall have attended upon instruction in the university for not less than one year, maintaining, meanwhile, a good character for faithfulness in study and correctness of deportment, and who may desire to cease such attendance, shall be entitled to receive such certificate of scholarships as is authorized by this section to be issued. All certificates of scholarships shall be in the English language, unless the pupil should otherwise prefer; and all names and terms on labels, samples, specimens, books, charts and reports shall be expressed, as nearly as may be, in the English language.

"Also, one hundred thousand dollars in Champaign County bonds, due and payable in ten years, and bearing interest at the rate of ten per cent per annum, and two thousand dollars in fruit, shade, and ornamental trees and shrubbery, to be selected from the nursery of M. L. Dunlap, and furnished at the lowest catalogue rates, making an estimated valuation of four hundred and fifty thousand dollars (\$450,000). Titles to be perfect, and conveyance to the state to be made or caused to be made by the County of Champaign, upon the permanent location of the Illinois Industrial University upon the said grounds, so to be conveyed as aforesaid; and we hereby in our official capacity guarantee the payment of the said bonds and the faithful execution of the deeds of conveyance, free from all incumbrances, as herein set forth.

W. D. SOMERS,
T. A. COSGROVE,
C. R. MOORHOUSE,
Committee."

34. Military instruction.] SECTION 13. The board of trustees shall, by and with the advice and consent of the Governor and Adjutant-General, procure all such arms, accoutrements, books, and instruments, and appoint such instructors as may, in their discretion, be required to impart a thorough knowledge of military tactics and military engineering, and they may prescribe a uniform dress to be worn by the pupils of the University.

35. Land scrip.] SECTION 14. That upon the organization of the board of trustees and the appointment of said treasurer, and the filing with and the approval by said board of the bond of said treasurer, and all of said foregoing acts being duly certified to the governor, under the hand of said regent, countersigned by the said recording secretary, it shall then become the legal duty of said governor to deliver over to said treasurer the land scrip issued by the United States to this state, for the endowment of said University, and that thereupon it shall become the duty of said treasurer to sell and dispose of said scrip at such time, place, in such manner and quantities, and upon such terms as such board shall, from time to time, prescribe, or to locate the same as said board may direct. Said treasurer being in all respects pertaining to the sale of said scrip, and the reinvestment of the proceeds received therefor, and the securities when reinvested, subject to such order and control of said board as is not inconsistent with this act and the Act of Congress providing for the endowment of said University.

36. Investment of title in scrip.] SECTION 15. That all the right, title, and interest of the State of Illinois in and to said

land scrip, is hereby invested in the Illinois Industrial University, for the use and purposes herein contained; and said scrip shall be assigned to said University by the governor of the State of Illinois on each certificate, and attested by the secretary of state under the seal of the state; and that the transfer of said scrip to purchasers by assignment on the back thereof, by the said officers of said University, under the seal thereof, in manner following, shall be deemed sufficient in law, to-wit:

State of Illinois, }
 Illinois Industrial University, } ss.

For value received, the State of Illinois hereby sells and assigns to the within scrip, and authorizes to locate the same and obtain a patent on such location.

Given under our hands and the seal of said University this day of, A. D. 19

Countersigned by
 E. F., *Recording Secretary*.
 A. B., *Regent*
 C. D., *Treasurer*.

37. Funds to be invested.] SECTION 16. That upon said treasurer making sale of any of said scrip, he shall at once invest the fund so received, report the same to the said board, stating amount sold, price obtained, and how the same was by him invested; which report shall be filed with the recording secretary, who shall transmit a copy of the same to the governor of said state, and he to the Congress of the United States, in accordance with said Act of Congress.

38. Securities.] SECTION 17. That the said board shall order upon its minutes which of the several kinds of securities mentioned in the fourth section of said Act of Congress said treasurer shall invest proceeds of sales in.

39. Treasurer's bond—Penalty for misappropriation.] SECTION 18. The bond required to be given by said treasurer shall be conditioned for the faithful discharge of his duties as treasurer of the "Illinois Industrial University," and for any breach thereof suit may be instituted in the name of the "Illinois Industrial University;" and it shall be deemed a criminal offense for any person or persons holding in trust any part of the funds of said University knowingly or negligently to misapply or misappropriate the same, indictable in any court having jurisdiction, in the same manner as other crimes are punishable, by fine or imprisonment, at the discretion of the court, according to the nature of the offense.

40. A public act.] SECTION 19. This act shall be a public act and take effect and be in force from and after its passage.

AN ACT to regulate the Illinois Industrial University, and to make appropriations therefor. [Approved May 7, 1873. L. 1873-4, p. 18.]

41. Election of trustees.] SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* There shall be elected at the general election to be held in the several precincts and counties of this state on the Tuesday next after the first Monday of November in the year of our Lord one thousand eight hundred and eighty-eight, and at each general election every two years thereafter there shall be elected, three trustees of the University of Illinois; and the trustees so elected, together with the Governor, the president of the state board of agriculture, the Superintendent of Public Instruction and those persons who may have been appointed by the Governor to be trustees of said University and whose terms of office shall not have expired, shall constitute the board of trustees of the University of Illinois, and shall succeed to and exercise all the powers conferred by the act entitled "An Act to provide for the organization and maintenance of the Illinois Industrial University," approved February 28, 1867, except as is herein, or may be hereafter, provided by law. [As amended by act filed June 15, 1887. L. 1887, p. 306.]⁶

42. Term of office—Appointment of executive committee.] SECTION 2. The trustees to be elected as provided in this act, shall be voted for on the same ballots with the state officers to be chosen at such recurring general elections, and the election of said trustees shall be conducted, and the canvass, statement, and return of the votes cast for said trustees shall be made in the same manner, and by the same officers, and shall be governed in every particular by the laws of this state governing a general election. The term of office to be held severally by the trustees so elected, and by their successors, shall be six years from the second Tuesday of March next succeeding the dates of their several elections, and until their successors shall have been elected and qualified: Provided, in case of vacancy in said board such vacancy shall be filled by appointment by the Governor until the next general election. Said board of trustees may appoint an executive committee of three chosen out of their own number, which committee, when said board is not in session, shall have the management and control of the University,

⁶The amendment of 1873 empowered the governor to appoint nine trustees—"three in each of the three grand divisions of this state—who, together with the governor and the president of the state board of agriculture for the time being, shall constitute the board of the trustees of the Illinois Industrial University. The said appointments shall be subject to approval or rejection by the senate" The term of office was to be six years and the Board was authorized to appoint an executive committee of three.

and of its affairs, and for that purpose shall have, and exercise, all the powers which are necessary and proper for such object, except in so far as the board may reserve such powers to itself and any powers granted at any time by said board to such executive committee, the board may at any time revoke. [As amended by act filed June 15, 1887. L. 1887, p. 306.]

43. Trustee not to be employed in office nor interested in contract of university.] SECTION 3. No member of such board shall hold or be employed in or appointed to any office or place under the authority of the board of which he is a member, nor shall any member of said board be directly or indirectly interested in any contract to be made by said board for any purpose whatever.

44. Fiscal year—Reports.]⁷

(1) The fiscal year of this State shall commence on the first day of July and close on the thirtieth day of June. The first fiscal year under this Act shall commence on the first day of July, A. D. 1919, and the current fiscal year is hereby abridged to end on the thirtieth day of June, A. D. 1919.

(3) Each officer of the executive department and all public institutions of the State shall, at least ten days preceding each regular session of the General Assembly, make and deliver to the Governor a biennial report of their acts and doings, respectively, arranged so as to show the acts and doings of each fiscal year separately, closing with the fiscal year preceding each regular session of the General Assembly.

45. President of board—Withdrawal of money.] SECTION 5. The trustees of the said University shall elect, annually, from their own number, a president, who shall also be one of the executive committee of three authorized by this act, in case such committee should be chosen and appointed by the said board; and no money shall be drawn from the treasury of the University, except by order of the board of trustees, or of the executive committee aforesaid, on the warrant of the president of the said board, countersigned by the recording secretary.

46. What branches of learning to be taught.] SECTION 6. All pupils attending the said University shall be taught, and shall study, such branches of learning as are related to agriculture and the mechanic arts, and as are adapted to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life, without excluding other scientific and classical studies, and including, for all male students, military tactics.

⁷Section 4, providing for the termination of the fiscal year of the university on the 31st day of August, is now superseded by Section 1 of the State Finance Act of 1919, being Section 139, Chapter 127, Smith-Hurd Revised Statutes, 1931, which is accordingly inserted in lieu thereof. Section 3 of the same act, providing for biennial reports, is also inserted at this point.

47. Investment of United States endowment funds.]

SECTION 7. The treasurer of the said University, and the said board, are hereby required in the future to invest the principal of the funds arising from the endowment granted by the United States, in interest-bearing bonds of the United States, or of this state,⁸ or in good county or school district bonds of this state. They are hereby prohibited from changing the securities in which said fund may be invested, except for reinvestment in interest-bearing bonds of the class and character specified above in this section. [As amended by act approved and in force April 17, 1877. L. 1877, p. 215.]

[SECTIONS 8, 9, 10. Appropriation and temporary provisions.]

AN ACT to change the name of the Illinois Industrial University. [Approved June 19, 1885. L. 1885, p. 252.]

48. Name changed to University of Illinois.] SECTION 1.

Be it enacted by the People of the State of Illinois, represented in the General Assembly: That the Illinois Industrial University, located at Urbana, in Champaign county, shall, after the passage of this act, be known as the University of Illinois, and under that name and title shall have, possess, be seized of and exercise, all rights, privileges, franchises, and estates which have hitherto belonged to, or may hereafter inure to the said Illinois Industrial University.

JUDICIAL DECISIONS

State Control: Tax Exemption. Although the state has created a body corporate to control the Illinois Industrial University, yet the state retains the power of appointing its trustees, and may, through agents other than the trustees, sell and dispose of the property of the institution, or amend or repeal the charter as public policy or the interest of the university may require. Lands held by the trustees of the Illinois Industrial University belong to the state and are therefore exempt from taxation under the act of 1853 relating to revenue. *Board of Trustees of Illinois Industrial University v. Board of Supervisors of Champaign County*, 76 Ill. 184 (1875). *Same v. People*, Id. 187 (1875).

University not Subject to Mechanic's Lien Law. The Illinois Industrial University was a state institution and not

⁸The earlier provision included the words, "or of other states which did not participate in the late rebellion."

subject to the Mechanic's Lien Law. The fact that a state institution is managed by a board of trustees, who may sue and be sued, does not authorize the special and restricted remedy against the property of the state under their control, provided by the Mechanic's Lien Law against individuals and private corporations, especially where the trustees are expressly prohibited from binding the state beyond the amount appropriated for the use of the institution. *Thomas v. Illinois Industrial University*, 71 Ill. 310 (1874).

Embezzlement of University Funds. The treasurer of the state university pledged certain interest-bearing bonds of the par value \$28,000, belonging to the invested endowment fund of the university, and received \$25,000 which was placed to his credit in a bank of which he was president. Under Section 80 of the Criminal Code this conversion of university funds to his own use was embezzlement, and his conviction thereof was affirmed. *Spalding v. People*, 172 Ill. 40, 49 N. E. 993 (1898).

Where a receiver appointed in the interest of all parties for an insolvent bank takes possession, under an order of court, of securities belonging to the president of the bank in his own right, such possession is merely that of an officer of the court, and, in the absence of any legal or equitable right to the property existing either in the bank or the receiver, the right to possession of the securities by one who has taken an assignment though under an order of the court can not be conditioned upon the refunding to the bank, for the benefit of its creditors, of a sum of money misappropriated by the president after the bank had closed its doors. *University of Illinois v. Globe Savings Bank*, 185 Ill. 514, 57 N. E. 417 (1900).

Professor's Contract. Where a professor was employed for a year, without specification as to whether an academic year or a calendar year was meant, the court held that the full salary was due after the professor had completed his service during the nine months of the academic year. The university made no claim to his services during the summer months, but sought to make a deduction from his pay because he secured remunerative employment at another institution during those months. The deduction was not allowed. *Board of Trustees of University of Illinois v. Bruner*, 175 Ill. 307, 51 N. E. 687 (1898).

University Employees under Civil Service. The University of Illinois is a public institution of the state, and the state may, through other agents than the trustees, sell the property of the institution and may amend or repeal its charter, and the income provided by the state for the university belongs to the state. The employees of the university, except the professors, instructors and teachers and others specified in Section 11 of the Civil Service act, are employees of the state under the Civil Service Commission. *People ex rel. Redman v. The Board of Trustees of the University of Illinois*, 283 Ill. 494, 119 N. E. 595 (1918).

Constitutionality of Compulsory Chapel Attendance. A rule of the trustees of the state university requiring students to attend non-sectarian religious exercises in the university chapel does not conflict with Section 3 of Article 2 of the Constitution of Illinois, which provides that "no person shall be required to attend or support any ministry or place of worship against his consent." *North v. University of Illinois*, 137 Ill. 296, 27 N. E. 54 (1891).

Biennial Appropriations are for Prospective Obligations. The legislative appropriation in 1917 for the University of Illinois for "two years beginning July 1, 1917, and until the expiration of the first fiscal quarter after the adjournment of the next General Assembly," was for prospective obligations and not to pay those previously incurred. *People ex rel. Redman v. The Board of Trustees of the University of Illinois*, 283 Ill. 494, 119 N. E. 595 (1918).

Customs Duties on Imported Scientific Apparatus. Scientific instruments and laboratory apparatus imported into the United States by the University of Illinois were held not to be exempt from the payment of customs duties, in an opinion of the United States Customs Court in which it was asserted that the university was not an instrumentality of the state of strictly governmental character. *The University of Illinois v. United States*, 54 Treasury Decisions 319, T. D. 43023 (1928).

The same decision was again reached by the United States Customs Court on a later hearing of this matter. This second decision was based on the theory that the rule prohibiting Federal taxation of state agencies merely prohibits any tax

which, if increased sufficiently, would destroy the state or any of its necessary instrumentalities; and asserts that a complete embargo on the importation of articles by a university would not destroy the institution. *University of Illinois v. United States*, 59 Treasury Decisions 747, T. D. 44758 (1931).

The foregoing decision was affirmed by the United States Court of Customs and Patent Appeals, by a vote of three to two, on the ground that the rule prohibiting Federal taxation of any agency of a state in the performance of its governmental functions does not extend to the imposition and collection of import duties. The power to regulate foreign commerce is an exclusive power of Congress, the exercise of which no state may obstruct. Hence articles imported by the University of Illinois are subject to import duties, whether the university be considered as a state agency or not. *University of Illinois v. United States*, 61 Treasury Decisions 1334, T. D. 45773 (June 20, 1932).

This decision was reviewed and affirmed by the Supreme Court of the United States, the opinion being written by Mr. Chief Justice Hughes, who said: "To permit the states and their instrumentalities to import commodities for their own use, regardless of the requirements imposed by the Congress, would undermine, if not destroy, the single control which it was one of the dominant purposes of the Constitution to create. It is for the Congress to decide to what extent, if at all, the states and their instrumentalities shall be relieved of the payment of duties on imported articles." *University of Illinois v. United States*, 53 S. Ct. 509 (March 20, 1933).

IOWA STATE COLLEGE OF AGRICULTURE AND MECHANIC ARTS

AMES, IOWA

A land-grant institution first authorized by the General Assembly of the State of Iowa in 1858. The state accepted the conditions of the Morrill Act in 1862, and the college was opened in 1868. At first it consisted of the four divisions of Agriculture, Engineering, Home Economics and Industrial Science. The division of Veterinary Medicine was organized in 1879. Opportunity for graduate work has been offered to qualified students since the founding of the institution. A few advanced degrees were conferred in 1877. The Graduate College was organized under a dean and special faculty in 1913. The total expenditures in 1930-31 were \$3,840,000, of which more than 60% came from state appropriations, and less than 1% from income from endowment. The college is governed by the State Board of Education, which also governs the State University of Iowa and the Iowa State Teachers College, but has no jurisdiction over the regular state system of elementary and secondary schools. The State Board of Education appoints from outside its own membership a Finance Committee of three members who spend their full time in the affairs of the state institutions of higher education.

LAWS RELATING TO THE IOWA STATE BOARD OF EDUCATION

The Governing Board of the State College of Agriculture and
Mechanic Arts¹

CHAPTER 195 CODE OF IOWA, 1924

SECTION 3912. Membership. "The state board of education shall consist of nine members, who shall be selected from the state at large solely with regard to their qualifications and fitness to discharge the duties of the office. Not more than five members shall be of the same political party. Not more than one alumnus of each of the institutions of higher learning, the state university, the college of agriculture and mechanic arts, and the Iowa state teachers college, shall be members of said board at one time.

SECTION 3913. Term of Office. "The term of each member of said board shall be for six years. The terms of three members of the board shall expire on the first day of July of each odd-numbered year.

SECTION 3914. Appointment. "During each regular session of the legislature, the governor shall appoint, with the approval of two-thirds of the members of the senate in executive session, three members of said board to succeed those whose terms expire on the first day of July next thereafter.

SECTION 3915. Confirmation. "No nominations shall be considered by the senate until the same have been referred to a committee of five, not more than three of whom shall belong to the same political party. Said committee shall be appointed by the president of the senate, without motion, and shall report to the senate in executive session. Such report shall be made at any time when called for by the senate. The consideration of nominations by the senate shall not be had on the same legislative day that nominations are so referred.

SECTION 3916. Removals. "The governor, with the approval of a majority of the senate during a session of the general assembly, may remove any member of the board for malfeasance in office, or for any cause which would render him ineligible for appointment or incapable or unfit to discharge the duties of his office, and his removal, when so made, shall be final.

¹From a copy supplied by W. H. Gemmill, Secretary of the Finance Committee, March 16, 1932.

SECTION 3917. Suspension. "When the general assembly is not in session, the governor may suspend any member so disqualified and shall appoint another to fill the vacancy thus created, subject to the approval of the senate when next in session.

SECTION 3918. Vacancies. "All vacancies on said board which may occur when the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days after the general assembly next convenes. Vacancies occurring during a session of the general assembly shall be filled before the end of said session in the same manner in which regular appointments are required to be made.

SECTION 3919. Institutions Governed. "The state board of education shall govern the following institutions:

1. The state university of Iowa.
2. The college of agriculture and mechanic arts, including the agricultural experiment station.
3. The Iowa state teachers college.
4. The state school for the blind.
5. The state school for the deaf.

SECTION 3920. Meetings. "The board shall meet four times a year. Special meetings may be called by the board, by the president of the board, or by the secretary of the board upon written request of any five members thereof.

SECTION 3921. Powers and duties. "The board shall:

1. Each even-numbered year elect, from its members, a president of the board, who shall serve for two years and until his successor is elected and qualified.
2. Elect a president of each of said institutions of higher learning; a superintendent of each of said other institutions; a treasurer and a secretarial officer for each institution annually; professors, instructors, officers, and employees; and fix their compensation.
3. Make rules for admission to and for the government of said institutions, not inconsistent with law.
4. Manage and control the property, both real and personal, belonging to said institutions.
5. With the approval of the executive council, acquire real estate for the proper uses of said institutions, and dispose of real estate belonging to said institutions when not necessary for their purposes.
6. Accept and administer trusts deemed by it beneficial to and perform obligations of the said institutions.
7. Direct the expenditure of all appropriations made to said institutions, and of any other moneys belonging thereto, but in no event shall the perpetual funds of the state college of agricul-

ture and mechanic arts, nor the permanent funds of the university derived under the acts of congress be diminished.

8. Collect the highest rate of interest, consistent with safety, obtainable on daily balances in the hands of the treasurer of each institution.

9. With the approval of the executive council, publish, from time to time, and distribute, such circulars, pamphlets, bulletins, and reports as may be in its judgment for the best interests of the institutions under its control, the expense of which shall be paid out of any funds in the treasury not otherwise appropriated.

10. Perform all other acts necessary and proper for the execution of the powers and duties conferred by law upon it and the finance committee.

SECTION 3922. Purchases—prohibitions. “No sale or purchase of real estate shall be made save upon the order of the board, made at a regular meeting, or one called for that purpose, and then in such manner and under such terms as the board may prescribe and only with the approval of the executive council. No member of the board or finance committee nor any officer of any institution, shall be directly or indirectly interested in such a purchase or sale.

SECTION 3923. Record. “All acts of the board relating to the management, purchase, disposition, or use of lands and other property of said institutions shall be entered of record, which shall show the members present, and how each voted upon each proposition.

SECTION 3924. Finance committee—organization—duties. “The board shall appoint a finance committee of three from outside its membership and shall designate one of such committee as chairman and one as secretary. Not more than two of its members shall be of the same political party, and its members shall hold office for a term of three years, unless sooner removed by a vote of two-thirds of the members of the board. In addition to the duties imposed upon the finance committee by law, the committee and members thereof shall make such investigations and reports and perform such ministerial duties as the board by resolution may direct, and the committee may make such recommendations to the board as it may deem proper.

SECTION 3925. Secretary of board and committee—duties. “The secretary shall be secretary of the board and of the committee, and shall separately keep and carefully preserve complete files of documents and records of the proceedings of the board and committee.

SECTION 3926. Loans—conditions. “The finance committee may loan funds belonging to said institutions, subject to the following regulations:

1. Each loan shall be secured by a mortgage paramount to all other liens upon approved farm lands in this state, accompanied by abstract showing merchantable title in the borrower. The loan shall not exceed fifty per cent of the cash value of the land, exclusive of buildings.

2. Each loan shall be for a term not exceeding ten years, at a rate of interest to be fixed by said board, payable annually, and the borrower shall have the privilege of paying one hundred dollars or any multiple thereof on any interest pay day.

3. Any portion of said funds not otherwise invested and any surplus income on funds not immediately required for other purposes may be invested by the finance committee on order of the board in bonds of the United States, or this state, or some county thereof, yielding not less than five per cent per annum.

4. A register containing a complete abstract of each loan and investment, and showing its actual condition, shall be kept by the secretary of said committee, and be at all times open to inspection.

SECTION 3927. Foreclosures and collections. "The finance committee shall have charge of the foreclosures of all mortgages and of all collections from delinquent debtors to said institutions. All action shall be in the name of the state board of education, for the use and benefit of the appropriate institution.

SECTION 3928. Satisfaction of mortgages. "When loans are paid, the finance committee shall release mortgages securing the same as follows:

1. By a satisfaction piece signed and acknowledged by the chairman or secretary of said committee, which shall be recorded in the office of the recorder of the county where said mortgage is of record, or

2. By entering a satisfaction thereof on the margin of the record of said mortgage, dated, and signed by the chairman or secretary of the committee.

SECTION 3929. Bidding in property. "In case of a sale upon execution, the premises may be bid off in the name of the board of education, for the benefit of the institution to which the loan belongs.

SECTION 3930. Deeds in trust. "Deeds for premises so acquired shall be held for the benefit of the appropriate institution and such lands shall be subject to lease or sale the same as other lands.

SECTION 3931. Actions not barred. "No lapse of time shall be a bar to any action to recover on any loan made on behalf of any institution.

SECTION 3932. Business offices—visitation. "A business office shall be maintained at each of the institutions of higher learning. The committee shall, once each month, attend each of

the institutions for the purpose of transacting any business that may properly come before it, and the performance of its duties.

SECTION 3933. Expenses—official residences. "The members of the finance committee shall devote their entire time to the work of said institutions. The members of the finance committee and other employees shall maintain their official residences at the places designated by the board, and shall be entitled to their necessary traveling expenses therefrom by the nearest traveled and practicable route incurred in visiting the different institutions and other places and returning therefrom when on official business and such other expenses as are actually and necessarily incurred in the performance of their official duties.

SECTION 3934. Auditor's report. "The Auditor of state shall include in his report to the governor the amount paid for such services and expenses and to whom paid.

SECTION 3935. Duties of treasurer. "The treasurer of each of said institutions shall:

1. Receive all appropriations made by the general assembly for said institutions, and all other funds from all other sources, belonging to said institution.

2. Pay out said funds only on order of the board of education, or the finance committee, on bills duly audited in accordance with the rules prescribed by said board.

3. Retain all bills, so paid by him, with receipts for their payment as his vouchers.

4. Keep an accurate account of all revenue and expenditures of said institution, so that the receipts and disbursements of each of its several departments shall be apparent at all times.

5. Annually, and at such other times as the board may require, report to it said receipts and disbursements in detail.

SECTION 3936. Reports of executive officers. "The executive officer of each of said institutions shall, on or before the first day of August of each even-numbered year, make a report to the board, setting forth such observations and recommendations as in his judgment are for the benefit of the institution, and also his recommendations of a budget for the several colleges and departments of the institution, in detail, and estimates of the amount of funds required therefor for the ensuing biennium.

SECTION 3937. Reports of secretarial officers. "The secretarial officer shall, for the institution of which he acts as secretary, on or before August first of each year, report to the board in such detail and form as it may prescribe:

1. The funds available each fiscal year from all sources for the erection, equipment, improvement, and repair of buildings.

2. Interest on endowment and other funds, tuition, state

appropriations, laboratory and janitor fees, donations, rents, and income from all sources affecting the annual income of the support funds of said institutions.

3. How the funds so received were expended, giving under separate heads the cost of instruction, administration, maintenance and equipment of departments, and the general expense of the institution.

4. The number of professors, instructors, fellows, and tutors, and the number of students enrolled in each course during each year, stating separately the number of students attending short courses.

5. The amount of unexpended balances of departments remaining in the hands of the treasurer, and the amounts undrawn from the state treasury on June thirtieth of each year.

The report for the state college of agriculture and mechanic arts shall also show the receipts of the experiment station from all sources for each fiscal year, and how the same were expended.

SECTION 3938. Report of board. "The board shall, biennially, at the time provided by law, report to the governor and the legislature such facts, observations, and conclusions respecting each of such institutions as in the judgment of the board should be considered by the legislature. Such report shall contain an itemized account of the receipts and expenditures of the board and finance committee, and also the reports made to the board by the executive officers of the several institutions or a summary thereof, and shall submit budgets for biennial appropriations deemed necessary and proper to be made for the support of the several institutions and for the extraordinary and special expenditures for buildings, betterments, and other improvements.

SECTION 3939. Colonel of cadets. "The commandant and instructor of military science and tactics at each of the institutions for higher learning is given the rank of colonel of cadets, and the governor shall issue such commission upon the request of the president of such institution.

SECTION 3940. Appropriations—monthly installments. "All appropriations made payable annually to each of the institutions under the control of the board of education shall be paid in twelve equal monthly installments on the last day of each month on order of said board.

SECTION 3941. Appropriation. "There is hereby appropriated from any funds in the state treasury not otherwise appropriated, sufficient thereof to pay the actual necessary expenses of the board and the finance committee, including the actual necessary expenses of their assistants. All claims under this section shall be filed with and allowed by the state board of audit in the same manner as may now or hereafter be

required in the case of claims for similar expenses by state officers.

SECTION 3942. Contracts for training teachers. "The board of directors of any school district in the state of Iowa may enter into contract with the state board of education for furnishing instruction to pupils of such school district, and for training teachers for the schools of the state in such particular lines of demonstration and instruction as are deemed necessary for the efficiency of the Iowa state teachers college, state university of Iowa, and college of agriculture and mechanic arts as training schools for teachers.

SECTION 3943. Payment. "The contract for such instruction shall authorize the payment for such service furnished the school district or for such service furnished the state, the amount to be agreed upon by the state board of education and the board of the school district thus cooperating.

SECTION 3944. Contract—time limit. "Such contracts shall be in writing and shall extend over a period of not to exceed two years, and a copy thereof shall be filed in the office of the superintendent of schools of the county.

SECTION 3945. Improvements—advertisement for bids. "When the estimated cost of construction, repairs, or improvement of buildings or grounds under charge of the state board of education shall exceed ten thousand dollars, the said board shall advertise for bids for the contemplated improvement or construction and shall let the work to the lowest responsible bidder: provided, however, if in the judgment of the board bids received be not acceptable, the said board may reject all bids and proceed with the construction, repair, or improvement by such method as the board may determine. All plans and specifications for repairs or construction, together with bids thereon, shall be filed by the board and be open for public inspection. All bids submitted under the provisions of this section shall be accompanied by a deposit of money or a certified check in such amount as the board may prescribe."

JUDICIAL DECISIONS

Sale of Agricultural College Lands. Though agricultural college lands are required to be sold on time to provide a fund for the college arising from the interest on the price, the college may receive the principal when its interest will be promoted thereby, and its officers will be presumed to have acted rightly and for its interest in receiving the principal before maturity with a bonus. *Burtis v. Humboldt County Bank*, 77 Iowa 103, 41 N. W. 585 (1889).

UNIVERSITY OF KANSAS

LAWRENCE, KANSAS

A state university provided for in the first Constitution of the Territory of Kansas in 1855. Located at Lawrence in 1863 and opened to students in 1866. Comprises the Graduate School, College of Liberal Arts and Sciences, School of Business, School of Education, School of Engineering and Architecture, School of Fine Arts, School of Law, School of Medicine, School of Pharmacy, Division of Libraries, Division of Museums, Division of Physical Education and Intercollegiate Athletics, Division of the Reserve Officers Training Corps, Division of State Survey Work, Division of Summer Session, Division of University Extension, Division of University Publications, Division of Vocations. Endowment in 1930, \$240,000. Income from other sources, \$2,180,000, of which state appropriations contributed \$1,400,000 in 1930. The university is governed by the State Board of Regents, which also governs the Kansas State College at Manhattan and the state teachers colleges at Emporia, Hays, and Pittsburg.

LAWS RELATING TO THE UNIVERSITY OF KANSAS

CONSTITUTIONAL PROVISIONS¹

(Adopted July 29, 1859)

ARTICLE VI

EDUCATION

SECTION 2. Schools. The legislature shall encourage the promotion of intellectual, moral, scientific and agricultural improvement, by establishing a uniform system of common schools, and schools of a higher grade, embracing normal, preparatory, collegiate and university departments.

SECTION 7. State university. Provision shall be made by law for the establishment, at some eligible and central point, of a state university, for the promotion of literature, and the arts and sciences, including a normal and an agricultural department. All funds arising from the sale or rents of lands granted by the United States to the state for the support of a state university, and all other grants, donations or bequests, either by the state or by individuals, for such purpose, shall remain a perpetual fund, to be called the "university fund"; the interest of which shall be appropriated to the support of the state university.

SECTION 8. Nonsectarianism. No religious sect or sects shall ever control any part of the common-school or university funds of the state.

SECTION 10. Tax for state educational institutions. The legislature may levy a permanent tax for the use and benefit of the state educational institutions and apportion among and appropriate the same to the several institutions, which levy, apportionment and appropriation shall continue until changed by statute. Nothing herein contained shall prevent such further appropriation by the legislature as may be deemed necessary from time to time for the needs of said state educational institutions.

Note.—This section was submitted by the legislature of 1917 (L. 1917, ch. 352), and was adopted by the people at the general election November 5, 1918.

ARTICLE XV

MISCELLANEOUS

SECTION 2. Tenure of office. The tenure of any office not herein provided for may be declared by law; when not so declared such office shall be held during the pleasure of the authority making the appointment, but the legislature shall not create any office the tenure of which shall be longer than four years.

¹*Revised Statutes of Kansas, 1923.*

STATUTORY PROVISIONS

CHAPTER 72—SCHOOLS

ARTICLE I

STATE DEPARTMENT OF EDUCATION²

72-104. **Admission to state university, agricultural college or teachers' colleges.** Any person who shall complete a four-year course of study in any high school accredited by the state board of education shall be entitled to admission to the freshman class of the state university, the state agricultural college, or any of the state teacher's colleges, on presenting a statement containing a transcript of his high-school record signed by the principal of the school and certifying that such person has satisfactorily completed said course of study. [L. 1915, ch. 296, Section 9; March 20.]

Note.—Section originally referred to "state normal schools"; by L. 1923, ch. 229, the names of these schools were changed to state teachers' colleges of the cities where located. See chapter 76, on "State Institutions." (Sections 76-503, 76-603, 76-618.)

CHAPTER 74—STATE BOARDS AND COMMISSIONS

ARTICLE XXXII (New)

BOARD OF REGENTS³

Note.—Authority of board over state educational institutions, see Section 76-108a.

74-3201. **State board of regents; creation, number, term.** That there is hereby created a state board of regents of the state of Kansas, composed of nine members, who shall be appointed by the governor. Of such nine members first appointed, three shall be appointed for a term of one year, two for a term of two years, two for a term of three years and two for a term of four years, said terms to begin simultaneously upon the qualification of the persons appointed therefor and terminating on June 30, in the respective years. Upon the expiration of the term or terms of any of the regents first appointed as aforesaid, succeeding regents shall be appointed and shall hold their office for a term of four years, and until their successors shall have been appointed and qualified. In case of a vacancy in the board of regents, the governor shall appoint and fill said vacancy for the unexpired term. After the appointment and qualification of said board of regents, it shall meet and organize by electing one of its members chairman. [L. 1925, ch. 259, Section 1; July 1.]⁴

²*Revised Statutes of Kansas, 1923.*

³*1931 Supplement to Revised Statutes of Kansas, 1923.*

⁴The first statutory provision for the University of Kansas was an act to

locate the "State University," 1863 (*Laws of Kansas*, 1863, pp. 115-16). This act authorized the Governor to appoint three commissioners to locate the University and specified certain requirements in regard to location.

The University was formally organized by an act of 1864 (*Laws of Kansas*, 1864, pp. 195-198) which established the name, "University of Kansas" and provided for the government of the University by a board of regents "to consist of a president and twelve members" besides the State Superintendent of Public Instruction and the Secretary of State who were made members, *ex officio*. The twelve members were to be appointed by the Governor, "by and with the advice and consent of the Senate, two-thirds of the Senators concurring therein." The term of office was set at six years. No more than three of the appointed regents could be members of "the same religious denomination." The Chancellor was to act as President of the Board of Regents.

By "An Act to provide for the government and maintenance of the University of Kansas", 1889, (*Laws of Kansas*, 1889, pp. 392-96) the governing law of the institution was enacted anew with a number of changes included. The Board of Regents was reduced to seven, six of whom were to be appointed by the Governor and confirmed by the Senate and whose term of office was four years. The Chancellor of the University, the seventh member, was to serve as President of the Board "with full powers of a regent". No one appointed to the Board of Regents could "be connected with the University as professor, tutor, teacher, or employé, except as the chancellor thereof."

Admission was made free to all inhabitants of the State. The Act of 1864 had specified that the fee of admission never exceed ten dollars and the tuition charges in the first and fourth departments never exceed thirty dollars per year to residents of the State, and that as soon as the increase of the University fund permitted, the tuition charges in those departments be dispensed with to residents of the State.

By an act of 1895 (*Laws of Kansas*, 1895, pp. 373-74) provisions in regard to fees were changed to read as contained in the present statutes.

By an act of 1913 (*Laws of Kansas*, 1913, Chap. 287) a State Board of Administration was created to govern the several state institutions and to supersede the respective separate institutional boards. This "State Board of Administration" consisted of three members appointed by the Governor with "the consent of a majority of the members of the Senate in executive session." Not more than two of the members could belong to the same political party and no more than one member could be an alumnus of any one of the educational institutions enumerated in the title of the act, and not more than one member could be from any one congressional district. The term of office was set at four years. Each member of this board was allowed an annual salary of three thousand, five hundred dollars and expenses.

This plan of administration was changed in several respects by an act of 1917 (*Laws of Kansas*, 1917, pp. 428-35). By this act the Governor was authorized to appoint, by and with the advice and consent of the Senate, three members of a "Board of Administration," "without reference to party politics and because of their fitness for the duties of the office." The Governor was to be chairman of the Board. The members were to furnish bond in the sum of ten thousand dollars, were to receive salaries of three thousand, five hundred dollars each and traveling expenses. Section 13 of the act read as follows:

This act contemplates among other things, the employment of an expert business manager, for the business and scientific management of the state institutions covered by this act, and also for the placing of all educational, benevolent and penal institutions of the state of Kansas under one management, and under one board of trustees or directors, with a suitable place of business at the state capitol, for the orderly and economical administration thereof, publicity and fairness in the awarding of contracts for all supplies, the keeping of such books, records, accounts and reports as shall show, not only the cost of maintaining each of said institutions, but the per capita

74-3202. **Members to receive expenses.** No member of said board of regents shall receive any compensation for his services, but each shall be allowed all actual traveling and necessary expenses incurred while in the discharge of any of his official duties. [L. 1925, ch. 259, Section 3; July 1.]

74-3203. **Secretary of board.** One of the assistant business managers who shall be designated by the business manager shall act as secretary for the board of regents and it shall be his duty to attend all meetings of the board of regents and keep full and correct records of its proceedings which when approved shall be signed by the chairman of the board and said assistant business manager. [L. 1925, ch. 259, Section 4; July 1.]

74-3204. **Meetings; quorum.** That said board of regents shall meet regularly on the first Monday in February, May, August and November in each year at the state capitol in Topeka. Special meetings may be held upon the call of the chairman or the state business manager, or upon the petition to the secretary of five members of the board, the date and place of all special meetings to be designated in the call. Five members of said board of regents shall constitute a quorum for the transaction of business but a less number may adjourn any regular or special called meeting to a definite time and place. [L. 1925, ch. 259, Section 5; July 1.]

74-3205. **Treasurer of board.** That the treasurer of the state of Kansas shall be the treasurer of said board of regents. [L. 1925, ch. 259, Section 8; July 1.]

Note.—Board of administration, see Sections 74-106 and 76-108a.

CHAPTER 76—STATE INSTITUTIONS

PART I.

MANAGEMENT

ARTICLE 1.—Board of Administration, and Board of Regents; Powers and Duties⁵

76-108a. **Board of regents; transfer of jurisdiction; powers and duties.** That all the jurisdiction, powers and duties now conferred by law upon the state board of administration relating to the university of Kansas, Kansas state agricultural college and all branch experiment stations of said Kansas state agricultural college, the Kansas state teachers college of Pittsburg, the Kansas state teachers college of

cost of maintaining the inmates thereof, and this act shall be liberally construed so as to carry out such purposes.

The outcome of the experiment of 1913, as readjusted in 1917, is indicated in Sections 74-3201 to 3205 of the *Revised Statutes, Supplement of 1931*, contained in this paper and also by Sections 76-108a, 108b and 108c, from the same source, likewise contained in this paper.

⁵1931 *Supplement to Revised Statutes of Kansas*, 1923.

Emporia, the Kansas state teachers college of Hays, are hereby withdrawn from the state board of administration and conferred upon the state board of regents; except that all powers and duties now or hereafter conferred by law upon the state business manager relating to said educational institutions herein named, shall be exercised by such business manager by and through said board of regents. [L. 1925, ch. 259, Section 2; July 1.]

Note.—For appointment of board, see chapter 74, on “State Boards and Commissions,” article 32.

76-108b. Authority over heads of institutions. That said board of regents shall have full power and authority to appoint the executive heads of the institutions under its jurisdiction with power to remove said executive heads, deans, professors, teachers or other employees, at the discretion of the board. [L. 1925, ch. 259, Section 6; July 1.]

76-108c. Powers of board. That on and after July 1, 1925, the present state board of administration shall have no further legal authority or power over said educational institutions herein named and all such powers heretofore exercised by it shall be and become vested in the board of regents and without further process of law, and said regents are authorized and directed to assume and exercise all the powers vested in and exercised by the state board of administration in respect to the institutions herein named. All the provisions of law not inconsistent with the provisions of this act with respect to the management, control and government of said educational institutions herein named shall apply to and be performed by the board of regents. [L. 1925, ch. 259, Section 7; July 1.]

76-161. Dormitory operating fund. That the state board of administration is hereby authorized and directed to create a dormitory operating fund at each of the educational institutions owning and operating dormitories; this fund to be derived from income of said dormitories after the deduction of all necessary expenses of upkeep, maintenance and repairs. The board of administration shall pay the accumulations of each dormitory operating fund into the state treasury each month. [R. S. 76-161; L. 1925, ch. 265, Section 1; Feb. '23.]

PART II. EDUCATIONAL

ARTICLE 3.—State University and University Lands^a

76-301. Name and location of state university. The name, “The University of Kansas,” and its location at Law-

^a*Revised Statutes of Kansas, 1923.* Only sections fundamental to the management of the institution are reproduced from the *Revised Statutes*.

rence, in Douglas county, are continued under this act. [L. 1889, ch. 258, Section 1; Feb. 27.]

76-302. Instruction at university. The university shall provide the means of acquiring a general and thorough knowledge in literature, the sciences and the arts, and also to provide students who desire to pursue special studies with the most approved appliances, authorities and instruction to insure the greatest knowledge and research in any special branch of learning connected with university education. [L. 1889, ch. 258, Section 2; Feb. 27.]

76-303. Departments and schools. The university shall consist of three departments: I, a department of the literatures; II, a department of the sciences; III, a department of the arts. Within these three departments there shall be established such schools as the board of administration in connection with the faculty may order. [L. 1889, ch. 258, Section 3; Feb. 27.]

76-304. Chancellor; faculty; officers and employees. The board of administration shall appoint a chancellor, who shall be the chief officer of the university, the head of each department thereof, and whose duties and powers otherwise than prescribed in this act shall be prescribed by the board of administration. The said chancellor shall appoint the professors, assistants, and tutors, the number and compensation of whom shall be determined by the board of administration. The chancellor shall also employ such other officers and employees as are authorized by the board of administration. The said chancellor shall hold his place at the pleasure of the board, and shall receive such compensation as the board may prescribe. The professors, assistants, tutors and all other officers and employees of the university shall hold their places at the pleasure of the chancellor of the university. [Revised, 1923; old section, L. 1889, ch. 258, Section 8.]

76-305. Government and management of university; degrees; special and postgraduate courses. The several departments of the university shall be under the immediate control and government of the chancellor and their respective faculties. The board of administration shall have power to prescribe by-laws not inconsistent with the laws of the state, to regulate the course of instruction, and, with the advice of the chancellor and the several faculties, prescribe the books, authorities and apparatus to be used in the several departments. The board of administration shall also, with the chancellor and faculties, confer such degrees as in their judgment they shall deem best. But no strictly honorary degree without corresponding literary or scientific attainments shall ever be granted by the university. Due regard shall be paid to the wants of such pupils as may desire to select a particular course

of study not laid down in the curriculum, and every advantage and assistance not conflicting with the regular work of the university shall be given to such as may wish to pursue special branches of learning for which no corresponding degree is provided; and special degrees may be conferred for high attainments therein. There shall be established at least four courses in the university and for the completion of which corresponding degrees shall be conferred; and postgraduate courses may be established in either department of the university, and corresponding degrees may be conferred for graduation therefrom. [L. 1889, ch. 258, Section 9; Feb. 27.]

76-306. Admission to university. All admissions to the regular university courses shall be upon examination or certificate from some high or preparatory school where courses of study have been established for the purpose of preparing students for admission into the freshman classes of the university. [L. 1889, ch. 258, Section 10; Feb. 27.]

76-307. Tuition and fees; persons not debarred on account of age, race, sex or religion. Tuition shall be free to all inhabitants of the state in the schools of arts, engineering, pharmacy, law, and medicine. All non-resident students and all students in the school of fine arts shall pay such tuition fees as the board may establish, and every student of the university shall pay laboratory fees to cover the cost of materials used and breakage of apparatus, and a graduation fee of five dollars. No person shall be debarred from membership of the university on account of age, race, sex, or religion. [L. 1889, ch. 258, Section 11; L. 1895, ch. 226, Section 1; May 27.]

76-308. Permanent university fund. The permanent university fund shall at no time be diminished for any purpose whatsoever; and whenever any gift, devise or bequest shall be granted to the university, the principal amount or proceeds thereof shall be made a part of the permanent university fund, unless otherwise expressly directed by the donor. [Revised, 1923; old sections, L. 1889, ch. 258, Section 14; L. 1895, ch. 226, Section 2.]

JUDICIAL DECISIONS

No Student Fees for Use of Library. Section 11 of chapter 258, Laws of Kansas of 1889 provided that admission into the university shall be free to all inhabitants of the state, and no person shall be debarred on account of age, race, or sex. Under this statute the regents were without power to charge each student a library fee of \$5, on penalty of exclusion from the

use of the books. A library fee is not on the same footing as laboratory fees, because the books and other facilities of the library are a part of the permanent equipment of the institution, while laboratory supplies and minor apparatus are necessarily expendable. *State ex rel. Little v. Regents of University*, 55 Kan. 389, 40 Pac. 656, 29 L. R. A. 378 (1895).

Revenue Measures to be for not More Than Two Years at a Time. So much of paragraph 6383 of the General Statutes of 1889 as purports to provide for raising a fund after the expiration of the two succeeding fiscal years, is void. Section 2 of chapter 226 of the Laws of 1895 is valid as a provision for raising the sum of \$100,000 per year for the support of the state university for the years ending June 30, 1896 and June 30, 1897. *State ex rel. Dawes v. Bailey*, 56 Kan. 81, 42 Pac. 373 (1895).

Bonds of the City of Lawrence, in Aid of the University. Chapter 21 of the Laws of 1870, authorizing the city of Lawrence to issue its bonds in aid of the university and to levy and collect taxes to pay the same, is not repugnant to Article 12 of the Constitution which prohibits the conferring of corporate powers by special act, nor with Section 1 of Article 11 which provides for a uniform rate of assessment and taxation. Chapter 42 of the Laws 1883, authorizing the substitution of bonds of the university in lieu of the bonds of the city of Lawrence in which a part of the permanent school fund is invested, is not invalid on the ground that it might diminish and impair the permanent school fund. *State v. City of Lawrence*, 79 Kan. 234, 100 Pac. 485 (1909).

Establishment of School of Mines and Metallurgy. Chapter 30 of the Laws of Kansas of 1911 imposed upon the Regents of the University of Kansas the duty of establishing a school of mines and metallurgy at the town of Weir. Plaintiff, being a citizen of Weir, owner of a home there and head of a family, and superintendent of several mines in the vicinity was entitled to maintain in his own name an action of mandamus to compel the establishment of the school, upon showing that he desired and intended to attend the school, and that he had a son whom he desired and intended to educate there. Under such circumstances the establishment of the school is not only

a public and social benefit, but also a private and individual benefit sufficient to give the complaining party the status of a party beneficially interested and thus entitled to bring an action for a writ of mandamus. *Young v. Regents of University of Kansas*, 87 Kan. 239, 124 Pac. 150 (1912).

The Board of Administration was not a Corporation. When plaintiff sued for damages for the alleged wrongful taking of a valuable fossil from his land by the Regents of the University of Kansas, he was met with the defense that the Board of Regents ceased to exist upon the adoption of chapter 287 of the Laws of 1913, by which the Legislature established the State Board of Administration as an agency of the state to manage the educational institutions. The act gave the Board of Administration no corporate powers, and no action can be maintained against either it or its members to recover for a wrongful act alleged to have been committed by the Board of Regents in 1911. *Garrity v. State Board of Administration of Educational Institutions*, 99 Kan. 695, 162 Pac. 1167 (1917).

Tax Exemption of Fraternity House. Under section 9128, Kansas General Statutes of 1909, providing that "all real estate not exceeding one-half acre in extent and the buildings thereon situate, and used exclusively by any college or university society as a literary hall or as a dormitory, if not leased or otherwise used with a view of profit . . . shall be exempt from taxation," fraternity and sorority houses so used are exempt. *Kappa Kappa Gamma House Association v. Percy*, 92 Kan. 1020, 142 Pac. 294, 52 L. R. A. N. S. 995 (1914).

Note: The statute mentioned in the above case was declared unconstitutional and void by the Supreme Court of Kansas in 1933, in the case of *Alpha Tau Omega v. Douglas County*. This decision is cited and digested below.

Tax Exemption: Fraternity Property. The real and personal property of fraternities is not exempted from taxation by the clause of Section 1, Article XI of the Kansas Constitution which provides that "All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, . . . shall be exempted from taxation" because the use of the property for literary and educational purposes is not exclusive and immediate and direct. Fur-

thermore, Section 79-203 of the Kansas Revised Statutes of 1923 (Section 9128, Kansas General Statutes of 1909), which exempts real estate not exceeding one-half acre and the buildings thereon, and the books, furniture, apparatus and instruments belonging to and used by college or university societies not for profit, is void, being in violation of the clause of Section 1, Article XI of the Constitution which requires the legislature to provide a uniform and equal rate of taxation. Thus a petition for a writ of mandamus to compel the removal of fraternity property from the tax rolls was denied, both as to the real estate and as to the personal property of the plaintiffs. *Alpha Tau Omega Fraternity of Lawrence v. Board of County Commissioners of Douglas County*; *Alpha Upsilon Chapter of Delta Sigma Phi Fraternity of Manhattan v. Rhodes, County Treasurer et al.*, 136 Kans. 675, 18 Pac. (2d) 573 (1933).

Removal of Chancellor of the University. In an action to enjoin the enforcement of an order of the Board of Administration removing the Chancellor of the state university, it was held that the statute providing that the Chancellor shall hold his office until removed by the Board for cause, is in conflict with the provision of the State Constitution that when the tenure of an office is not declared by law, it shall be held during the pleasure of the authority making the appointment, "but the Legislature shall not create any office the tenure of which shall be longer than four years." Hence the Board could remove the Chancellor at pleasure, and such action would not be reviewed by the courts except on the ground of actual corruption or what would be tantamount thereto. *Lindley v. Davis*, 117 Kan. 558, 231 Pac. 1026 (1925).

Note: The arbitrary dismissal of Chancellor Lindley by the Board of Administration was closely followed by the enactment of chapter 259, Kansas Laws of 1925, which conferred all jurisdiction of the Board of Administration relating to the five state institutions of higher education upon the new State Board of Regents which was created to govern those institutions. The State Board of Regents reappointed Chancellor Lindley, and he has occupied the position continuously since that time.

UNIVERSITY OF KENTUCKY

LEXINGTON, KENTUCKY

A state university chartered in 1865 as a Department of Agriculture and Mechanic Arts in the institution known as Kentucky University. Created as a separate institution under state control at Lexington by legislative act of 1878 under the name State Agriculture and Mechanical Arts College (changed to State University of Kentucky, 1908, and to University of Kentucky in 1916). The institution receives annually 6.7% of the taxes raised on general assessment of the state and in addition one-half of the receipts from the inheritance tax. Legislative appropriations are also made for special purposes. Endowment in 1930, \$185,000. Total annual income, in excess of \$2,040,000.

LAWS RELATING TO THE UNIVERSITY OF KENTUCKY

STATUTORY PROVISIONS¹

SECTION 4636a-1. Name of the university. That the institution founded under the land grant of eighteen hundred and sixty-two by the congress of the United States and known formerly under the corporate designation and title of "Agricultural and Mechanical College of Kentucky" and afterwards known and designated as "The State University, Lexington, Kentucky," be hereafter known and designated as "University of Kentucky." (1916, c. 20, p. 149, Sec. 1, amending 1908, c. 3, p. 4, Sec. 1.)

SECTION 4636a-2. Maintained by state. That the said state university be maintained by the Commonwealth with such endowments, incomes, buildings and equipments as shall enable it to do work such as is done in other institutions of corresponding rank, both under-graduate and post-graduate, and embracing work of instruction as well as in original research. (1908, c. 3, p. 4, Sec. 2.)

SECTION 4636a-3. All acts relating to the A. & M. College continued in force. That all the acts of the general assembly of the Commonwealth of Kentucky, making provision for the establishment, support and maintenance of the Agricultural and Mechanical College of Kentucky, heretofore enacted, viz.: An act appointing a commission for the location of the Agricultural and Mechanical College, approved March 13, 1878; an act locating and establishing the Agricultural and Mechanical College, approved February 6, 1880; an act incorporating the Agricultural and Mechanical College, approved March 4, 1880; an act amending the act of incorporation, approved April 23, 1880; an act of the general assembly, approved April 29, 1880, and Section 184 of the Constitution of Kentucky, guaranteeing the validity of the tax levied for the benefit of the Agricultural and Mechanical College by said act, approved April 29, 1880; an act of incorporation, amending the acts of March 4, 1880, and April 23, 1880, approved May 9, 1893; an act for the maintenance of the girls' dormitory approved March 21, 1900, and an act making an annual appropriation for the maintenance and support of the said college, which became a law March 26, 1904; and that all the acts of the congress of the United States, creating and endowing colleges under the land

¹*Carroll's Kentucky Statutes, (Baldwin's Revision) Official Edition, Revised to 1930.* Used by permission of the Banks-Baldwin Law Publishing Company, Cleveland, Ohio.

grant of 1862, viz.: The act providing for the establishing of the college for the benefit of agricultural and mechanical arts, approved July 2, 1862; the act of establishing experiment stations as departments of agricultural colleges, approved March 2, 1887; the act for applying a portion of the proceeds of the public lands to the more complete endowment of the colleges established under the act of July 2, 1862, which passed the senate June 23, 1890; the act known as the "Adams act," further endowing experiment stations, passed by congress March 16, 1906; an act known as the "Nelson act," for the further endowment of agricultural and mechanical colleges, passed by congress March 4, 1907, shall not be affected by this change of name, and the revenues accruing from these and from all other sources, state and federal, shall continue to be paid over by the state and federal authorities to the treasurer of the State University, Lexington, Kentucky, for its use and maintenance, in accordance with the provisions of said acts of congress and of the general assembly of Kentucky. (1908, c. 3, p. 4, Sec. 3.)

Editor's note.—An act of Congress approved August . . . , 1890, supplementing the act of Congress approved July 2, 1862, was accepted by Kentucky by act of January 13, 1893, c. 130, p. 432.

SECTION 4636a-4. Act of congress to be carried out. That the requirements of the law of congress, approved July 2, 1862, for the instruction in those branches of learning, relating to agriculture and the mechanic arts and to military tactics, shall be carried out fully and that those branches shall continue to be integral and indispensable courses of instruction in the State University; and that in addition to the other colleges of the said university, one of the colleges shall be denominated the agricultural college, and another the college of mechanical arts of the State University. (1908, c. 3, p. 4, Sec. 4.)

SECTION 4636a-5. Law department. That a department of law, or course of instruction in the science of law, leading to the degree of bachelor of laws, shall be established in said university. The course prescribed leading to said degree shall be of equal dignity and rank to that of other corresponding institutions. (1908, c. 3, p. 4, Sec. 5.)

SECTION 4636a-6. Medical and surgical department. That a department of medicine and surgery, or course of instruction in the science of medicine and surgery, leading to the usual degrees conferred in such courses, shall be established in said university. The courses prescribed shall be of equal dignity and rank to that of other corresponding institutions, and that a diploma issued from this department shall be accepted throughout the state on equal terms with diplomas issued from other corresponding institutions. (1908, c. 3, p. 4, Sec. 6.)

SECTION 4636a-7. [See Editor's note.]

Editor's note.—The act of March 16, 1908, c. 3, p. 4, Sec. 7, amended what was then K. S. Sec. 26 to read as in said Sec. 7 provided. Thereafter Judge Carroll, in editing the statutes applicable to the state university, transferred K. S. Secs. 26 to 30b inclusive to new numbers K. S. Secs. 4636c-15 to 4636c-30b. K. S. Sec. 26 became K. S. Sec. 4636c-26, which see. This section was held unconstitutional and void, as contrary to Const. Sec. 3, in the case of *Barker v. Crum*, 177 Ky. 637, 19 S. W. 211 (1917).

SECTION 4636a-8. **Free tuition for students for the ministry.** That the board of trustees of said university may, within their discretion, concede the privilege of free tuition to students who are preparing for the ministry in connection with any white religious denomination. (1908, c. 3, p. 4, Sec. 8.)

SECTION 4636a-9. **Board of trustees to be bi-partisan.** That the board of trustees shall, from and after January 1, 1910, be bi-partisan, and the governor in making the appointments of trustees shall so make them as to divide the representation upon said board equally between the two leading political parties of this Commonwealth, including the *ex officio* members. That the superintendent of public instruction shall be, *ex officio*, a member of the board of trustees. (1908, c. 3, p. 4, Sec. 9.)

SECTION 4636a-10. **Expenses of change in title of institution.** That the board of trustees have authority, out of the funds under their control, to expend an amount sufficient to meet the necessary expenses incurred in advertising and other necessary changes incident to the change of the style and title of the said institution. (1908, c. 3, p. 4, Sec. 10.)

SECTION 4636a-11. **Location; Lexington.** That the location of the institution established by the act locating the Agricultural and Mechanical College of Kentucky, approved February 6, 1880, shall not be affected by this change of name. (1908, c. 3, p. 4, Sec. 11.)

SECTION 4636a-12. **Acts and rules for A. and M. College remain in force.** That all acts passed by the legislature of Kentucky, and all the regulations made by the board of trustees in pursuance thereof, for the government of the Agricultural and Mechanical college, shall continue in effect and apply to the government of the State University, Lexington, Kentucky, except to the extent herein specifically set out. (1908, c. 3, p. 4, Sec. 12.)

SECTION 4636a-13. **Law and medical students; tuition of.** That all students attending exclusively the law or medical department of the university shall pay the usual tuition fees. (1908, c. 3, p. 4, Sec. 13.)

SECTION 4636b-2. Department of education; established; certificates to students. That the normal department of said university, as it now exists, be eliminated, and there be established instead thereof a department of education in said university with collegiate rank, leading to the usual degree in pedagogy, as maintained in other similar state institutions. That degrees of bachelor of arts in education, and bachelor of science in education conferred in this department, shall, with the approval of the state superintendent of public instruction, entitle the holder thereof to the privilege of teaching in the common schools and high schools of the Commonwealth, without further examination, during life or good behavior. The diplomas granting degrees may be revoked for cause by the said board of trustees or by the state superintendent of public instruction.

*That the board of trustees of the University of Kentucky shall have the power and authority to confer through the college of education of said University the following certificates:

1. A college elementary certificate, valid for two years of teaching in any elementary school of the state, shall be issued upon completion of at least thirty-two semester hours of work including six semester hours in education. This certificate shall be renewed for two years upon completion of at least sixteen or more additional semester hours of college work at least eight of which must be earned in residence.

2. A standard certificate, valid for three years of teaching in any public school of the Commonwealth, shall be issued upon completion of at least sixty-four semester hours of college work including twelve semester hours in education. This certificate shall be renewed upon evidence of thirty-two semester hours of college work including six semester hours of education. It may be extended for life when the applicant has met the requirements for a baccalaureate degree in the college of education and presents in addition thereto three years of successful teaching experience after graduation from the University of Kentucky.

3. A college certificate, valid for three years of teaching in any public school of the Commonwealth, shall be issued to persons completing a curriculum in the college of education and receiving a degree therefrom. This certificate shall be renewed for life after three years of successful experience in educational work in the public schools. Credit for one year of graduate work may be accepted in lieu of one year of successful experience as above provided.*

The official endorsement of the state superintendent of public instruction shall be necessary to validate any of the said three certificates or extension thereof above named. Any certif-

icate may be revoked for cause by said board of trustees or by the state superintendent of public instruction. (March 16, 1908, c. 5, p. 22, Sec. 1, as amd. March 24, 1926, c. 89, p. 303.)

**Editor's note.*—So much of the foregoing section as is embraced in the portion between the two asterisks is the act of March 24, 1926, c. 89, p. 303, complete except the title, which reads:

"An act relating to the University of Kentucky; providing for the granting of teachers' certificates upon credentials; empowering the board of trustees of the University of Kentucky to confer certificates; repealing, amending and reenacting Sec. 143, subsection 4636b-2, Kentucky Statutes, chapter 14 of the Acts of the general assembly of 1922."

No words of express repeal of any law are employed, as would be inferred from the title. The editor concludes that the remainder of the section is not in conflict with the new act and it is compiled as given above.

Certificates by quasi-public normal schools. K. S. Sec. 4535c-1.

Examinations for certificates. K. S. Secs. 4501-2 et seq.

High school certificates. K. S. Secs. 4502a-1 et seq.

SECTION 4636b-3. **Special courses.** That from and after two years from this date all sub-freshman work shall begin to be eliminated as a part of the university curriculum, and such elimination shall progress as rapidly as the educational conditions in Kentucky will justify: Provided, however, Special courses may be given in any of the departments of the university, except that no sub-freshman normal instruction shall be given after September 1, 1908, in any department of the university or academy connected therewith. (1908, c. 5, p. 22, Sec. 1.)

SECTION 4636b-4. **Twenty thousand dollars (\$20,000.00) annual appropriation.** [See Editor's note.]

Editor's note.—K. S. Sec. 4636b-4 was the act of March 16, 1908, c. 5, p. 22, Sec. 4. It was repealed by the act of March 5, 1918, c. 4, p. 11, compiled as K. S. Sec. 4019, substituting an annual tax levy for the annual appropriations theretofore made.

SECTION 4636b-5. **One-cent (1c) annual tax levy.** [See Editor's note.]

Editor's note.—The act of March 5, 1918, c. 4, p. 11, compiled as K. S. Sec. 4019, substituted a tax levy for the one cent (1c) annual tax levy made by the act of April 29, 1880, c. 1315, p. 137.

SECTION 4636c-1. **Government of the university; board of trustees; who compose; appointive members; term; qualifications; alumni nominations; each alumnus has one vote; not public officers; vacancies as in original appointments.** The government, administration and control

of the University of Kentucky is hereby vested in a board of trustees, constituted and appointed as follows: The governor of Kentucky, who shall be chairman of the board; the superintendent of public instruction and the commissioner of agriculture, labor and statistics, who shall be *ex officio* members, and twelve citizens of Kentucky, discreet, intelligent and prudent, who shall be appointed by the governor of Kentucky. Four of each shall be appointed each biennium for a term of six years, and until their successors are appointed. One of the four so appointed shall be a member of the state board of agriculture, one shall be appointed from among three alumni nominated to the governor by the alumni of the university, and the other two shall be distinguished citizens of the Commonwealth, one of whom shall be appointed from each of the political parties having the right to appoint a member of the state board of election commissioners. With the exception of the members of the board of trustees appointed upon the nomination of the alumni of the university, no two members of the board of trustees who are appointed by the governor shall be residents of any one county of Kentucky. All appointments as members of the board of trustees by the governor shall be made during the month of January in the even years. The board of trustees of the university shall prescribe the method by which the alumni of the university shall make the nominations to the governor of the three persons from whom the alumni members of the board of trustees shall be appointed. Each alumnus shall be permitted to vote, but no alumnus shall be permitted to vote for the nomination of alumni trustees in the year in which such alumnus has received his or her degree. No member of the board of trustees shall be held to be a public officer by reason of his or her membership on said board; provided, however, as soon as this act shall become effective the terms of the present members of the board of trustees of the university shall expire, and the governor shall appoint twelve members of the board of trustees, four of whom shall serve until January, 1920, four of whom shall serve until January, 1922, and four of whom shall serve until January, 1924, and until their successors are appointed. In making such appointments the governor shall appoint for each of said terms one member of the state board of agriculture, one alumnus of the institution, and two distinguished citizens, one of whom shall be a member of each of the political parties in the state having the right to name a member of the state board of election commissioners. In case of vacancies by resignation, removal or death, the governor shall fill such vacancies in the same manner as provided for the appointment of members of the board. (March 26, 1918, c. 42, p. 127, Sec. 1a; amended March 22, 1922, c. 36, p. 139.)

Editor's note.—The act of March 26, 1918, c. 42, p. 127, Sec. 3, repealed section 2 of the act of March 15, 1916, c. 20, p. 149, as well as K. S. Secs. 4636c-15, 4636c-20, 4636c-22 and 4636c-24. The said act of 1916 had repealed the act of March 20, 1914, c. 67, p. 174.²

SECTION 4636c-1a. Member *ex officio*; present president emeritus so constituted; term; powers.

(1) That the position of member *ex officio* of the board of trustees of the university of Kentucky is hereby created.

(2) That the president emeritus of said university shall, so long as he may live, or so long as he may desire, hold said posi-

²The Act of Incorporation (*Laws of Kentucky*, 1880, Chap. 359, pp. 38-42) originally provided for only the Governor as *ex officio* member, and twelve men to be nominated by the Governor, "by and with the advice and consent of the Senate, and who shall hold office for six years, four retiring and four being appointed at each regular session of the General Assembly; and four who shall be elected by the alumni of the institution so soon as said alumni shall exceed one hundred, and who shall hold their office for six years, two being elected and two retiring every two years." No further requirements were specified in this act.

By an act of May 9, 1893, (*Laws of Kentucky*, 1893, Chap. 198, pp. 901-8) the board was increased to fifteen members and the Governor was continued as *ex officio* chairman and the president of the college was made, *ex officio*, a member of the board.

By an act of March 20, 1914, (*Laws of Kentucky*, 1914, Chap. 67, pp. 174-76) specific provisions were made for the addition of six alumni members to the Board and the executive committee was increased to seven members, "three of whom shall be from those graduates of the University, appointed from the alumni recommendations, any four of whom shall constitute a quorum." It was further required that one-fifth of those appointed by the Governor, exclusive of those elected by the alumni, should be alumni of the said institution.

By an act of March 15, 1916, (*Laws of Kentucky*, 1916, Chap. 20, pp. 149-57) the Superintendent of Public Instruction, the Commissioner of Agriculture, Labor and Statistics, and the seven members of the State Board of Agriculture were added as *ex officio* members of the Board. Of the fifteen appointive members, exclusive of the alumni nominees, "One from each Congressional District outside of the Congressional District in which Lexington is situated, and the remainder from the latter district; but no more than three trustees shall be appointed from the county of Fayette; provided that no trustee now serving under an appointment previously made shall be displaced by the operation of this act before his term of service shall have expired."

New provisions were made for the manner of election of alumni members and the Governor was also authorized to appoint an "extension committee of eight" and be chairman of the committee—the members to be equally divided between the two political parties in the state.

By an act of March 26, 1918, (*Laws of Kentucky*, 1918, Chap. 42, pp. 127-30) the board was reduced to a total of twelve appointive members, four to be appointed each biennium, one to be from among three alumni nominees, one a member of the State Board of Agriculture, and two to be distinguished citizens of the Commonwealth, "one of whom shall be appointed from each of the political parties." And no two members, with the exception of those nominated by the alumni, "shall be residents of any one county in Kentucky." The executive committee was reduced to five and the appointment of an Extension Committee consisting of four members of the Board in addition to himself, was made the duty of the chairman of the board (the Governor). The seven members of the State Board of Agriculture were dropped as *ex officio* members and the others retained.

tion and upon his death or resignation the position shall be automatically abolished.

(3) That said member shall perform all duties now required of other members of the board of trustees of the university of Kentucky and shall in all respects have the same power and authority now vested in other members of said board. (1920, c. 29, p. 132.)

SECTION 4636c-2. Regular and special meetings; notice; business at special meetings. The board of trustees of the university shall meet at least four times a year, as follows:

On the Tuesday preceding the regular annual commencement of the university, on the third Tuesday in September, on the second Tuesday in December and on the first Tuesday in April of each year.

Special meetings of the board, however, may be called by the chairman or by any three members of the board upon giving ten days' notice of the meeting in writing to each member of the board, but at such special meetings the business to be transacted shall be specified in the notice of the meeting. (1918, c. 42, p. 127, Sec. 1b.)

SECTION 4636c-3. Executive committee; members; powers; review by board. The board of trustees shall annually elect an executive committee of five, which executive committee shall have such powers as may be delegated to it by the board of trustees. The executive committee shall submit to the board of trustees at each meeting, for its consideration and approval, a complete record of its proceedings; provided, however, the authority of the board of trustees to revise the acts of the executive committee shall not extend to the rejection of any valid or any authenticated expenditure of money by said executive committee. (1918, c. 42, p. 127, Sec. 1c.)³

³Provision was first made for the executive committee of five in the Act of April 23, 1880, (*Laws of Kentucky*, 1880, Chap. 1094, pp. 101-104) as follows:

Section 5. The board of trustees shall, at each regular annual meeting, appoint an executive committee, consisting of five of their number, residing near Lexington, including a chairman thereof, three of whom shall constitute a quorum, and said committee shall choose from their number a chairman *pro tempore* to act in the absence of the permanent chairman. The executive committee shall be charged with the general administration of the affairs of the college under the by-laws and regulations prescribed by the board of trustees, and with the execution of measures specially authorized by the board. It shall, at each regular annual meeting of the board of trustees, and at each called meeting if required, submit to the board a complete record of its proceedings, together with a full and detailed account of the receipts and expenditures since the last preceding annual meeting, for the consideration and action of the board of trustees: *Provided*, That the authority of the board of trustees to revise the acts of the executive committee shall not extend to the rejection of any valid and properly authenticated account of money expended under a general or specific authority granted by the board of trustees, and within the sums appropriated by the board for specific or

SECTION 4636c-4. Vice chairman; officers; by-laws. The board of trustees shall have power to elect a vice-chairman and such other officers as it may deem wise, and shall have power to make such by-laws, rules and regulations not inconsistent herewith as it may deem proper. (1918, c. 42, p. 127, Sec. 1d.)

SECTION 4636c-5. Extension committee; members; agricultural extension work. The chairman of the board shall appoint at the meeting in June of each year an extension committee, consisting of four members of the board of trustees in addition to himself, to advise with the dean of the college of agriculture and the director of extension on matters pertaining to the extension service in the state. (1918, c. 42, p. 127, Sec. 1e.)

SECTIONS 4636c-6 to 4636c-15. [See Editor's note.]

Editor's note.—K. S. Secs. 4636c-6 to 4636c-14 never were in use. K. S. Secs. 4636c-15 to 4636c-30b were originally K. S. Secs. 15 to 30b and were transferred to their present places by Judge Carroll in compiling the 1909 edition of the Kentucky Statutes. K. S. Secs. 4636c-15 to 4636c-30 (formerly K. S. Secs. 15 to 30) were originally the act of May 9, 1893, c. 198, p. 901, Secs. 1 to 16. K. S. Sec. 4636c-15 was amended by acts of March 20, 1914, c. 67, p. 174, and March 15, 1916, c. 20, p. 149, Sec. 2, and expressly repealed by act of March 26, 1918, c. 42, p. 127, Sec. 3.

SECTION 4636c-16. Trustees; powers of; president, professors and officers; appointment and removal of. The board of trustees, when appointed and qualified, shall be a body-corporate, under the corporate name of the agricultural and mechanical college of Kentucky, and as a corporation shall have power to sue and be sued, implead and be impleaded, contract and be contracted with, and possess all the immunities, rights, privileges and franchises usually attaching to the governing bodies of educational institutions. They shall have power to receive, hold and administer, on behalf of the institution whose government, administration and control is committed to them, all revenues accruing from all existing or future endowments, appropriations or bequests, by whomsoever made, subject to the conditions attaching thereto; to receive, administer

contingent objects at a regular or called meeting. The secretary of the board of trustees shall be *ex officio* secretary of the executive committee, and the custodian of the records, etc., of the board and of said committee; and he may employ an assistant, who shall aid him in the clerical duties of said office, and receive such compensation as may be determined by the board of trustees.

By an act of March 20, 1914, (*Laws of Kentucky*, 1914, Chap. 67, pp. 174-76) the executive committee was increased to seven members, "three of whom shall be from those graduates of the University, appointed from the alumni recommendations, any four of whom shall constitute a quorum."

By an act of March 26, 1918, (*Laws of Kentucky*, 1918, Chap. 42, pp. 127-30) the executive committee was reduced to five.

and apply, for and on behalf of said college, all moneys, devises, stocks, bonds, buildings, museums, lands, apparatus, and so forth, and so forth, under the conditions attaching thereto. Said trustees shall have power to determine, from time to time, the number of departments of study or investigation which the college shall comprise within the scope of the organic act of congress, or acts supplementary thereto, donating land scrip for the endowment of agricultural and mechanical colleges; the relation which each department or group of departments shall sustain to each other and to the whole; to devise, allot and arrange the distribution of departments or groups of departments, with the designation appropriate to each; and to devise the means required for their effective instruction, administration and government. They shall have also power to appoint presidents, professors, assistants, tutors, and other officers, and to determine the salaries, duties and official relations of each; and shall provide for a definite salary in money attached to all positions created and filled by the board of trustees; and there shall be no additions thereto in the form of fees, perquisites or emoluments of any kind whatever. They shall have full power to suspend or remove at will any of the officers, teachers, professors or agents whom they are authorized by law to appoint, and to do all other acts which may be needful for the welfare of the institution. (1893, c. 198, p. 901, Sec. 2.)⁴

SECTION 4636c-17. Degrees may be granted by trustees. Said board of trustees shall have power to grant degrees to the alumni of the institution, to prescribe conditions upon which post-graduate honors shall be obtained by its alumni and others, and to confer such honorary degrees, upon the recommendation of the faculty of the institution, as they may think proper. (1893, c. 198, p. 901, Sec. 3.)

SECTION 4636c-18. Majority of board a quorum. A majority of the whole board shall constitute a quorum for the transaction of business. (1893, c. 198, p. 901, Sec. 4.)

SECTION 4636c-19. Preference not to be shown to any religion. In the appointment of presidents, professors or instructors no preference shall be shown to any religious denomination. (1893, c. 198, p. 901, Sec. 5.)

⁴The Act of Incorporation, Mar. 4, 1880, (*Laws of Kentucky*, 1880, Chap. 359, pp. 38-42) gave the board approximately the same powers stated in Section 4636c-16, above, but limited the power of removal of appointees by specifying that "no professor or president shall be removed, except for just cause, and by a majority of the whole board." This provision was changed in an amending act of April 23, 1880, (*Laws of Kentucky*, 1880, Chap. 1094, pp. 101-104) as follows:

"Section 3. The board of trustees shall have full power to suspend or remove, at will, any of the officers, teachers, professors, or agents, whom they are authorized by law to appoint . . ."

SECTION 4636c-20. [See Editor's note.]

Editor's note.—K. S. Sec. 4636c-20 (originally K. S. Sec. 20) was the act of May 9, 1893, c. 198, p. 901, Sec. 6. It was expressly repealed by the act of March 26, 1918, c. 42, p. 127, Sec. 3.

SECTION 4636c-21. **Treasurer; bond; accounts and statements; action against.** That the treasurer of said college shall enter into covenant with the Commonwealth of Kentucky, with one or more good securities bound therein, to be approved by the board of trustees, conditioned for the faithful performance of his duties, and the payment of all moneys that shall come to his hands, to his successors in office, or to such person or persons as may be lawfully entitled to receive the same. Any person or persons, including the board of trustees, injured by any breach of this bond, may maintain in the Fayette circuit court appropriate action thereon. The said treasurer shall keep an itemized account of receipts and expenditures, and shall pay out no money except on authorization of the board of trustees, given directly or through its executive committee. He shall render to the executive committee monthly statements of receipts and expenditures, and amount on hand, and a full detailed statement, with vouchers, for the information and action of the board of trustees at its regular annual meeting, and at other periods when required. (1893, c. 198, p. 901, Sec. 7.)

SECTION 4636c-22. [See Editor's note.]

Editor's note.—K. S. Sec. 4636c-22 (originally K. S. Sec. 22) was the act of May 9, 1893, c. 198, p. 901, Sec. 8. It was expressly repealed by the act of March 26, 1918, c. 42, p. 127, Sec. 3.

SECTION 4636c-23. **Expenses of trustees in attending meetings paid.** All necessary expenses incurred by the trustees in going to, returning from, or while attending the meetings of the board, shall be met and discharged out of the funds of the institution. (1893, c. 198, p. 901, Sec. 9.)

SECTION 4636c-25. **Collegiate period four years; normal department.** That the regular collegiate period of the agricultural and mechanical college shall be four years, and only those students who pass through that period and attain the prescribed standard of proficiency in the regular course of studies, or those who, having qualified themselves elsewhere, shall be found after at least one year's attendance in the college, to have attained the prescribed standard of proficiency in the regular course of studies, shall receive a diploma from the college. But a normal department or course of instruction for irregular periods, designed more particularly, but not exclusively, to qualify teachers for common or other schools, and an academy or preparatory department to prepare students for the regular courses of study in the college, shall be established

and maintained in connection with the college, each under a competent principal and assistants, and under the general supervision and control of the faculty thereof. (1893, c. 198, p. 901, Sec. 11.)

SECTION 4636c-26. Government of college; trustees to establish rules for. That the board of trustees be, and hereby are, empowered to establish the proper regulations for the government of the college and the physical training, military or otherwise, of the students, and to authorize the suspension and dismissal of students for neglect or violation of the regulations, or for other conduct prejudicial to the character and welfare of the institution. (1893, c. 198, p. 901, Sec. 12.)

Editor's note.—By act of March 16, 1908, c. 3, p. 4, Sec. 7, the legislature attempted to amend K. S. Sec. 26, which is now K. S. Sec. 4636c-26, but the amendment was pronounced void under Const. Sec. 3, in the case of *Barker v. Crum*, 177 Ky. 637, 19 S. W. 211, and is omitted. It would seem that the legislature probably intended to amend K. S. Sec. 28, now K. S. Sec. 4636c-28.

SECTION 4636c-27. Report to be made by trustees to each legislature. That the board of trustees shall make to the general assembly, within the first month of each regular session, a full report of the condition and operation of the college since the date of the preceding report, with such recommendations concerning the college as may be deemed necessary. (1893, c. 198, p. 901, Sec. 13.)

SECTION 4636c-28. Student; when to receive free tuition and traveling expenses; selection of students. Each legislative district in the state shall, in consideration of the incomes accruing to the college under "an act for the benefit of the agricultural and mechanical college of Kentucky," approved April twenty-nine, one thousand eight hundred and eighty, be entitled to select and to send to said college each year one properly prepared student, free from all charges for tuition, matriculation fees, room rent, fuel and lights, and to have all the advantages and privileges of the college and dormitories free, except board. Said students shall be entitled, free of any cost whatever, to the benefits enumerated above for the term of years necessary to complete the course of study in which he or she matriculates for graduation, or during good behavior. All beneficiaries of the state who continue students for one consecutive collegiate year, or ten months, unless unavoidably prevented, shall also be entitled to their necessary traveling expenses in going to and returning from said college. The selection of the beneficiaries shall be made by the superintendents of common schools in their respective counties, upon competitive examination, on subjects prepared by the faculty of the college and transmitted to said

superintendents before the first day of June of each year: Provided, That no standard of admission adopted by the college for admission into the academy shall exclude from the benefits of this act county appointees who have completed the course of study prescribed by law for the common schools of the Commonwealth. Said competitive examination shall be open to all persons between the ages of fourteen and twenty-four years. Preference shall be given, other things being equal, to those who have passed with credit through the public school, persons of energy and industry, whose means are small, to aid whom in obtaining a good education this provision is intended. If any representative district contains more than one county, each county so included shall be entitled to select one beneficiary as aforesaid. Said competitive examination shall be held, and the successful competitor appointed, between the first day of June and the first day of August of each year. It shall be the duty of the county superintendent to make known the benefits of this provision to each common school district under his superintendency, with the time and place, when and where such competitive examination shall be held. He shall, for this purpose, appoint a board of examiners, whose duty it shall be to conduct the examination. (1893, c. 198, p. 901, Sec. 14.)

Editor's note.—See the Editor's note to K. S. Sec. 4636c-26, and Editor's note to K. S. Sec. 4636a-7.

This section referred to in K. S. 4636c-30a.

This section is not in force.

SECTION 4636c-29. Teachers; four from each county to receive tuition; how selected. In addition to the foregoing, teachers or persons preparing to teach may be admitted at the rate of not more than four from each county, upon the same conditions, receive the same benefits and have the same privileges in said college as prescribed in the preceding section. These appointments shall be vested in the county superintendents. Said appointments may be made and certified to the president of the college at any time between the first day of July and the thirty-first day of December of each year. (1893, c. 198, p. 901, Sec. 15.)

SECTION 4636c-30. Circular setting forth benefits of college to be distributed. The president shall, on or before the first day of July of each year, have printed and mailed to each county superintendent of common schools of this state at least as many circulars of information relative to said college as there are common school districts in said respective counties. Said circulars shall set forth in full the benefits of, methods of admission into, and the probable cost of beneficiaries of said college. The county superintendent of common schools shall have at least one of said circulars posted in the schoolhouse of each

common school district in their respective counties during the term of the free school thereof. (1893, c. 198, p. 901, Sec. 16.)

SECTION 4636c-30a. Penalty for violation Secs. 4636c-28 and 4636c-30. That each failure or neglect on the part of the superintendents of schools in any county in Kentucky to place in such schoolhouse in his county before the fifteenth of May, of each year, a copy of the circulars aforesaid, transmitted by the president of said college for the purpose aforesaid, shall be deemed a neglect of duty; and for each offense an action may be maintained against such superintendent by the trustees of each school within the county where circulars have not been placed according to the law, and upon conviction thereof he shall be subject to a penalty of not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00). Said action may be maintained in the courts of justice of the peace having jurisdiction in the school district or in the county court, and a like penalty shall be incurred by the superintendent for the neglect of duty in appointing a time and place for competitive examination for the selection of beneficiaries in his county according to the provisions set forth in Sec. 28 [K. S. Sec. 4636c-28] of the aforesaid act, approved May ninth, one thousand eight hundred and ninety-three. (1902, c. 45, p. 86.)

Editor's note.—See Editor's note to K. S. Sec. 4636c-15. The act of March 21, 1902, c. 45, p. 86, was formerly K. S. Sec. 30a.

SECTION 4636d-4. Trustees to appoint board of women to superintend dormitory; term; meetings; reports; duties; compensation. The board of trustees shall appoint three prudent, discreet, intelligent women, members in good standing of one of the religious organizations recognized by the laws of the United States, who shall constitute a board of supervision or control to manage and superintend, under the direction of the board of trustees, the dormitory for young women. The term of service shall be for six years; but the first appointments shall be, one for two years, one for four years, and one for six years, respectively, and thereafter, upon the expiration of their terms of service, one shall be appointed at the close of each biennial period to fill the vacancy; provided, however, that the board of trustees shall have power at any time to remove any member of the board of control for reasons which they may deem sufficient and to fill the unexpired term by an ad interim appointment. Said board of supervision shall meet at convenient intervals for the transaction of business. They shall keep a record of their proceedings and submit the same to the board of trustees at their regular meetings. Their receipts and expenditures shall be embodied in semi-annual reports to the board. They shall, when the dormitory is ready for the reception of students, submit to the board of trustees for their ap-

proval, or to the executive committee if the board of trustees be not in session, a body of regulations in relation to their administration of the business of the dormitory, and in relation to the conduct and discipline of its occupants. The members of the board of supervision or control shall receive no salary; but the necessary expenses, incurred in the discharge of their duties, shall be paid out of the funds set apart for the administration of the woman's dormitory. (1900, c. 24, p. 67, Sec. 4.)

SECTION 4636d-6. Rates of board for women; other fees. The rates of board charged young women shall be determined by the cost of provisions and their preparation and service, with no margin of profit. A small monthly fee, may, however, be added to cover the wear and tear of kitchen, dining room and bedroom furniture. (1900, c. 24, p. 67, Sec. 6.)

SECTION 4636d-7. Duties of women's board. The duties of the board of supervision or control shall be concerned exclusively with the management of the women's dormitory, and shall in no wise relate to the college privileges, duties and relations of the young women nor to the requirements of the faculty regarding their work or the discipline and control of the faculty over them as students. (1900, c. 24, p. 67, Sec. 7.)

SECTION 4636d-8. Duties of president as to dormitory. The president of the college shall as the representative of the board of trustees, have the same general authority in regard to the women's dormitory which he is expected and required to exercise over the interests all and singular of the college, and any occupant of said dormitory who may feel aggrieved by the act of the board of control or the subordinate appointees shall have the privilege of appeal to the president of the college, whose decision shall be final until the next meeting of the executive committee. (1900, c. 24, p. 67, Sec. 8.)

SECTION 4636d-9. Students who have preference for accommodations. Women students attending said college as beneficiaries and appointees of counties or legislative districts shall have preference for accommodations in said women's dormitory, and if the accommodations of said dormitory are not sufficient for all such appointees, then the proper authorities of said college shall decide, in some way fair and equitable, who shall be entitled to said accommodations, all counties being given equal representation as nearly as possible. If any rooms in said dormitory remain after all such appointees are accommodated, other female students may be allowed the use thereof, each county being given equal representation as nearly as possible. All rooms shall be assigned by lot three days after the session opens.

Like rules and preferences shall be observed in regard to dormitory accommodations provided for men students at said

college. All rooms shall be assigned by lot three days after the session opens. (1900, c. 24, p. 67, Sec. 9.)

SECTION 46361-1. Sale and conveyance of unnecessary real property, when authorized. That whenever any real estate, the title to which is held by the University of Kentucky or by the Commonwealth for the use or benefit of said university, or any real estate, the title to which is held by the Commonwealth or the University of Kentucky for the use or benefit of the Kentucky agricultural experiment station, shall, in the opinion of the board of trustees of said university, no longer be necessary for the purpose of said university or said Kentucky agricultural experiment station, the board of trustees of said University shall have the power, with the approval of the governor, to sell and convey any such real estate, and the proceeds of the sale thereof shall become a part of the fund out of which the real estate so sold was purchased: Provided, however, that this act shall in no event authorize the sale of any part of said real estate situated in the city of Lexington within the area bounded by Winslow street or Euclid avenue on the north, Rose street on the east, Graham avenue, Graham avenue extended, and Washington avenue on the south, and Limestone street on the west. (1928, c. 146, p. 480.)

JUDICIAL DECISIONS

Constitutionality of Tax. The statute of 1880, imposing a tax each year for the benefit of the Agricultural and Mechanical College of Kentucky, an institution incorporated by law and under state control, does not violate article 11 of the Constitution of Kentucky which provides that the common school fund, together with any sum raised in the state by taxation or otherwise for purposes of education, may be appropriated in aid of common schools, but for no other purpose. *Higgins v. Prater*, 91 Ky. 6, 14 S. W. 910; *Hill v. Hamilton*, Id. (1890).

Constitutionality of Appropriations. Section 184 of the Kentucky Constitution directs that no sum shall be raised for education other than the common schools until the question of taxation is approved by a majority of votes cast at an election for the purpose, provided that "the tax now imposed for educational purposes and for the endowment and maintenance of the Agricultural and Mechanical College shall remain until changed by law." Chapter 120, acts of 1904, appropriated a sum of money to the college, the question not having been submitted to the voters. The act was held valid in view of the

fact that the college was being maintained by state appropriations when the constitution was adopted, and the college was regarded by the constitutional convention as excepted from the general provisions regarding the revenues for educational purposes. *Agricultural and Mechanical College v. Hager, Auditor*, 121 Ky. 1, 27 Ky. Law Rep. 1178, 87 S. W. 1125 (1905).

Sections 49, 50, of the Constitution prohibit the Legislature from contracting an indebtedness in excess of \$500,000 to meet casual deficits or failures in the revenues, or for contracting a debt for any other purpose except with a provision for levy and collection of a tax to meet it. The act of March 16, 1908, appropriating \$200,000 for buildings for state educational institutions, to be paid in three equal sums in December of three successive years, and \$70,000 for their current expenses of the year and a like amount for each succeeding year, did not contravene the foregoing sections. *James, Auditor v. State University*, 131 Ky. 156, 114 S. W. 767 (1908).

The action of the state university, a corporation authorized to sue and be sued, will not be dismissed because the attorney bringing the action has not been employed by the governor at the request of the attorney general as provided in sub-section 5, section 112 of the Kentucky statutes. The act of March 11, 1912, providing enlarged appropriations for the Agricultural Experiment Station of the university was not invalid and does not create a debt against the state of more than \$500,000 in excess of its revenues, as prohibited in the Constitution, because this prohibition applies to formal borrowing by the Legislature, and not to ordinary appropriations for current governmental expenses. *Bosworth, Auditor of the Commonwealth v. State University*, 154 Ky. 370, 157 S. W. 913 (1913).

Free Scholarships Unconstitutional. Section 4636a, sub-section 7, Kentucky statutes, purporting to grant free tuition and other expenses to a designated number of students chosen from each county of the state, in part by competitive examination and in part by the exercise of discretion by the examining board, violates the constitutional provision against granting exclusive special public emoluments or privileges. The statute is therefore void. *Barker v. Crum*, 177 Ky. 637, 198 S. W. 211, L. R. A. 1918 F 673 (1917).

Constitutionality of County Appropriation for Salary of Agricultural Agent. An act of 1916 providing for acceptance of Federal grants for agricultural extension work and home economics, and authorizing county fiscal courts and boards of education to appropriate funds for this work in their respective counties, in cooperation with the University of Kentucky, was not unconstitutional. An appropriation by a county to pay part of the salary of a county agricultural agent does not violate section 3 of the Constitution of Kentucky, prohibiting the "granting of exclusive or separate emoluments or privileges except in consideration of public service", though it is made chiefly for the benefit of those engaged in agricultural pursuits. *Carman and University of Kentucky v. Hickman County*, 185 Ky. 630, 215 S. W. 408 (1919).

Constitutionality of Dormitory Construction Plan. The act of June 13, 1928, providing a method of financing the erection of new buildings by the educational institutions of the state, does not violate section 157 of the constitution of Kentucky, providing that no municipality shall be permitted to become indebted to an amount exceeding in any year the revenue provided for that year without the assent of two-thirds of the voters. Subject to limitations prescribed by the constitution, the legislature has complete control of any property belonging to any of the institutions of the state. *McDonald v. University of Kentucky*, 225 Ky. 205, 7 S. W. (2d) 1046 (1928).

KNOX COLLEGE
GALESBURG, ILLINOIS

A privately endowed co-educational college, originally affiliated with the Presbyterian and Congregational denominations, but has been non-denominational for many years. Chartered in 1837 as Knox Manual Labor College. Name changed to Knox College in 1857. Endowment in 1931 exceeded \$1,860,000. Annual budget expenditures \$288,000, of which more than half was derived from student fees.

CHARTER OF KNOX COLLEGE

AN ACT

TO INCORPORATE

THE KNOX MANUAL LABOR COLLEGE¹

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, that John Waters, John G. Sanburn, Mathew Chambers, Erastus Swift, Nehemiah H. Losey, George H. Wright, Ralph H. Hurlbut, George W. Gale, Nehemiah West, Thomas Simmons, and Parnach Owen, be and hereby are created a body politic and corporate, to be styled and known by the name of the Trustees of Knox Manual Labor College, and by that name and style to remain, and have perpetual succession. The said College shall be located on section No. fifteen, in township No. eleven north, of range one east, of the Fourth Principal Meridian, in the County of Knox. The number of Trustees shall not exceed twenty-five, including the President of the College, who shall be *ex officio* a member of the Board of Trustees. For the present the individuals above named shall constitute the Board of Trustees, with power to fill the remaining vacancies at their discretion.²

SECTION 2. The object of said corporation shall be to promote the general interests of literature, and to qualify young men in the best manner for the various professional and business occupations of society, by carrying into effect a thorough system of mental, moral and physical education, and so reduce the expenses of such education, by manual labor and other means, as shall bring it within the reach of every young man of industry and promise.³

SECTION 3. The corporate powers hereby bestowed, shall be such only as are essential to the attainment of said object, and such as are usually conferred on similar bodies corporate, viz., to have perpetual succession, to make contracts, to sue and be sued, plead and be impleaded, to grant and receive in its corporate name, and to do all other acts as natural persons may, to accept, acquire, purchase or sell property, real, personal or mixed, in all lawful ways, to use, employ, manage and dispose

¹*Charter and By-Laws of Knox College*, pp. 2-5. Galesburg, Illinois: Published by the College, 1923.

²*Ibid.*, p. 6. Name changed to Knox College, 1857.

³*Ibid.*, p. 7. "Female Collegiate Department" authorized in amendment of 1857. This continued as a separate department until 1895 when it was absorbed by the College, thus making the College fully co-educational.

of all such property, and all money belonging to said corporation, in such manner as shall seem to the Trustees best adapted to promote the above mentioned objects, to have a common seal and to alter or change the same, to make such by-laws for its regulation as are not inconsistent with the constitution and laws of the United States or this State, and to confer on such persons as may be considered worthy, such academical and honorary degrees as are usually conferred by similar institutions.

SECTION 4. The Trustees shall have power from time to time to prescribe and regulate the course of study to be pursued in said College and in the preparatory departments attached thereto, to fix the rate of tuition, room rent and other College expenses, to appoint instructors, professors, and such other officers and agents as may be needed in managing the concerns of the institution, to define their powers, duties, and employments, to fix their compensation, to displace and remove either of the instructors, officers or agents, as they may deem the interests of the College require; to fill all vacancies among the instructors, officers and agents, to erect necessary buildings, to purchase books, chemical and philosophical apparatus, and other suitable means of instruction, to establish and regulate the proposed system of manual labor, in the way which they shall deem best adapted to promote the object of said corporation, to make rules for the general management of the affairs of the College, and for the regulation of the conduct of the students, and to establish when they shall deem it expedient, and the means can be procured, professorships of law and medicine.

SECTION 5. If any Trustee shall be elected President of said College, his former place as Trustee shall be considered vacant, and shall be filled by the Board of Trustees. The Trustees for the time being, shall have power to remove any Trustee from office for any dishonorable or criminal conduct, provided, that no such removal shall take place without giving to such Trustee notice of the charges exhibited against him, and an opportunity to defend himself before the Board, nor unless two-thirds of the whole number of Trustees for the time being, shall concur in such removal. The trustees in order to have perpetual succession, shall have power as often as a Trustee shall be removed from office, die, resign, or remove out of the State, to appoint a resident of this State to fill the vacancy in the Board.⁴ A majority of the Trustees for the time being, shall be a quorum to do business.

⁴*Ibid.*, p. 9. Affected, 1875, by, "An Act to enable non-residents of this State to hold the office of trustee in colleges, universities and other institutions of learning not under the control of officers of this state." Three must be residents of Illinois. (Approved April 2, 1875. L. 1875, p. 112.)

SECTION 6. The Trustees shall faithfully apply all funds collected or hereafter to be collected for said College, according to their best judgment, in erecting suitable buildings, in compensating the necessary instructors, professors, officers, and agents, and in procuring books, maps, charts, globes, philosophical, chemical and other apparatus necessary in the promotion of sound learning in said institution; provided, that in case any donation, devise or bequest shall be made, for particular purposes, accordant with the objects of the institution, and the Trustees shall accept the same, every such donation, devise or bequest shall be expressly applied in conformity with the condition prescribed by the donor, or devisor; provided, also, that lands donated or devised as aforesaid, shall be sold or disposed of as required by the last section of this act.

SECTION 7. The Trustees of said College always, and all other agents when required by the Trustees, before entering on the duties of their appointments, shall give bonds respectively for the security of the corporation, in such penal sum and with such securities as the Board of Trustees shall approve. All process against said corporation shall be by summons, and the service of the same shall be by leaving an attested copy with the Treasurer of the College, at least thirty days before the return day thereof.

SECTION 8. The said College and its preparatory departments shall be open to all denominations of Christians, and the profession of any particular religious faith shall not be required of those who become students; all persons whoever, may be suspended or expelled from said institution whose habits are idle or vicious, or whose moral character is bad.

SECTION 9. The lands, tenements and hereditaments to be held in perpetuity in virtue of this act, by said institution, shall not exceed one thousand and forty acres, provided, however, that if donation, grants or devises in land shall from time to time be made to said corporation, over and above one thousand and forty acres, which may be held in perpetuity, as aforesaid, the same may be received and held by such corporation, for the period of three years from the date of every such donation, grant or devise; at the end of which time, if the said lands over and above the said one thousand and forty acres, shall not have been sold, then and in that case the said land so donated, granted or devised, shall revert to the owner, granter, or the heirs of the devisors of the same.

Approved February 15, 1837.⁵

⁵*Ibid.*, pp. 5-6. Amended, 1840, to extend the time in which trustees might dispose of lands in excess of the allowed one thousand and forty acres, to seven years in addition to the original three; amended, 1851, to extend the time to ten years in addition to the previously granted three and seven; amended, 1857, removing all time limitations.

JUDICIAL DECISIONS

Tax Exemption: President's Residence and Fraternity Houses. A residence owned by the college and used by the president as a part of the consideration for his services is not exempt from taxation on the ground that it is used for school purposes. Residences occupied by college fraternities whose memberships are exclusive and which are not open to all students, are not exempt from taxation on the ground that they take the place of college dormitories, even though they have been built by the college and the fraternities, each paying one-half of the cost, and the titles are taken in the name of the college. *Knox College v. Board of Review of Knox County*, 308 Ill. 160, 139 N. E. 56 (1923).

LEHIGH UNIVERSITY
BETHLEHEM, PENNSYLVANIA

A privately controlled university for men, comprising a College of Arts and Science, a College of Business Administration, and a College of Engineering. There is an institute of research, and graduate work leading to a Master's degree. Chartered in 1866. Endowment in 1930, approximately \$5,300,000, with an additional trust fund of over \$1,500,000. Total annual budget over \$1,000,000.

CHARTER OF LEHIGH UNIVERSITY¹

AN ACT

To erect and establish at, or near, the Borough of South Bethlehem, in Northampton County, a polytechnic college, for the education of youth, of the name, style and title of the Lehigh University.

PREAMBLE

WHEREAS, Asa Packer, of Mauch Chunk, Carbon County, Pennsylvania, has donated the sum of Five Hundred Thousand Dollars, for the purpose of founding and endowing a polytechnic college, to be located at South Bethlehem, in the County of Northampton, and has also given fifty acres of land, as a site for the college buildings and park grounds, and is desirous of having the institution incorporated, by legislative enactment, under the name of the Lehigh University:—

AND WHEREAS, the said donor has appointed William Bacon Stevens, of Philadelphia; Asa Packer, of Carbon County; John W. Maynard, Robert H. Sayre, John Fritz and William H. Sayre, Junior, of Northampton County; Joseph Harrison, Junior, of Philadelphia; and G. B. Linderman, Robert A. Packer and Harry E. Packer, of Carbon County, Trustees of and for said institution; therefore,—

COLLEGE ESTABLISHED

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That there be and hereby is erected and established, at, or near, the Borough of South Bethlehem, in Northampton County, in this Commonwealth, a polytechnic college, for the education of youth, the name, style and title of which college, and the constitution thereof, shall be, and are, as follows:—

TITLE

ARTICLE 1. The said college shall be, hereafter and forever, known and called by the name and style of the Lehigh University.

MANAGEMENT

ARTICLE 2. The said university shall be under the management, direction and government of a board of trustees, consist-

¹*Charter and Regulations of Lehigh University*. Published by Lehigh University, 1930.

ing of ten persons, as hereinafter mentioned, one of whom shall be, by them, elected president of the board.

FIRST TRUSTEES. INCORPORATION.
POWER AND PRIVILEGES.

ARTICLE 3. That the first trustees of said university shall consist of the following persons: William B. Stevens; Asa Packer, of Carbon County; John W. Maynard, Robert H. Sayre, John Fritz and William H. Sayre, Junior, of Northampton County; Joseph Harrison, Junior, of Philadelphia; G. B. Linderman, Robert A. Packer and Harry E. Packer, of Carbon County; which said trustees, and their successors, to be elected, in the manner hereinafter mentioned, shall forever hereinafter, be one body politic and corporate, in deed and in law, to all intents and purposes whatsoever, by the name, style and title of the Lehigh University, at South Bethlehem, in the County of Northampton, Pennsylvania; by which name and title, the said trustees, and their successors, shall be competent and capable, in law and in equity, to take to themselves, and their successors, for the use and benefit of said university, any estate, in any messuages, lands, tenements, hereditaments, goods, chattels, moneys, or effects, by the gift, grant, bargain, sale, conveyance, assurance, will, devise, or bequest, of any person, or persons, whatsoever, and the same property and effects to sell, rent, and dispose of, as occasion may require, for the use of said university, in such manner as to the said trustees, or a majority of them, at a legal meeting of the board, shall seem most beneficial to the institution, and to receive the income, rent, issues and proceeds, to the use and support of said university; and by the same name, to sue and be sued, plead and be impleaded, in any courts of law, or equity, and in all manner of suits, or actions, whatsoever, and generally, by and in the same, to do and contract, all and every, the business touching, or concerning, the business interests of the institution, as fully and effectually as any natural person, or body politic, or corporate, within the Commonwealth, have power to manage their own concerns, and to hold, enjoy and exercise all such power, authorities and jurisdictions, as are customary in other colleges in these United States.

SEAL

ARTICLE 4. And that the said trustees shall cause to be made, for their use, one common seal, with such devices and inscriptions thereon, as they shall think proper, under and by which, deeds, diplomas, certificates, and acts of the said corporation, shall pass and be authenticated; and the same seal, at their pleasure, from time to time, to change and alter.

MEETING OF TRUSTEES. QUORUM.
POWERS OF TRUSTEES.

ARTICLE 5. And there shall be a meeting of said trustees, at least once in every year, in the Borough of South Bethlehem, at such time and place as the said trustees, or a quorum of them, shall appoint, of which notice, in writing, shall be given by the secretary, at least twenty days before the time of such intended meeting; a majority of the board of trustees, when so convened, shall constitute a quorum, for the transaction of business, and a less number shall have power to adjourn, from time to time, when a like notice shall be given to absent members, at least ten days before the adjourned meeting, signed by the secretary, president, or two members of the board; and the board of trustees, at their annual meeting, and at adjourned meetings, as occasion may require, or a quorum, so convened, shall be capable of doing all the business and concerns of said university, not otherwise provided for in this act, and particularly of making ordinances, for the government of said institution; of filling vacancies in the board of trustees, occasioned by death, resignation, or otherwise; of electing, or appointing, the principals and professors of said university; of fixing the amount of their salaries and stipends, and removing them for misconduct, neglect of duty, or breach of the laws of the institution, or for any reason they, the majority, may deem sufficient; of appointing committees of their own body, to carry into execution all, and every, the resolutions of the board; of appointing a treasurer, secretary, steward, managers, and other necessary and customary officers, for taking care of the establishment, and managing the concerns of the corporation.

PRESIDENT AND PROFESSORS, RELATIVE TO;
DEGREES, DIPLOMAS, ETC.

ARTICLE 6. That the head, or chief master, of the institution, shall be called and styled the president of the university, and the masters thereof shall be called and styled professors; but neither principal, nor professor, while they remain such, shall be capable of holding the office of trustee; the president and professors, or a majority of them, shall be called and styled the faculty of the university; which faculty shall have the power of enforcing the rules and regulations, adopted by the trustees, for the government of the pupils, by rewarding, or censuring them, and finally, by suspending such of them as, after repeated admonitions, shall continue disobedient and refractory, until a determination of a quorum of the trustees can be had; and of granting and confirming, by and with the approbation and consent of the board of trustees, signified by their mandamus, such

degrees in the liberal arts and science, to such pupils of the university, or others, who, by their proficiency in learning, or other meritorious distinctions, they shall think entitled to them, as are usually conferred and granted in other colleges of the United States, and to grant to such graduates diplomas, or certificates, under their common seal, and signed by the faculty, to authenticate and perpetuate the memory of such graduation.

MISNOMER NOT TO DEFEAT ANY GIFT,
DEVISE, ETC.

ARTICLE 7. No misnomer of the said corporation shall defeat, or annul, any gift, grant, devise, or bequest, to, or from, the said corporation: *Provided*, The intent of the parties shall sufficiently appear, of the gift, grant, will, or other writing, whereby any estate, or interest, was intended to pass to, or from, the said corporation; nor shall any dis-user, or user, of the rights, liberties, privileges, jurisdictions, or authorities, hereby granted to the said corporation, or any of them, create, or cause, a forfeiture thereof; and the donations of the founder of the Lehigh University, including the plots of ground mentioned, so long as the same are held, or used, for the purpose of the institution, shall be free and exempt from taxation.

JAMES R. KELLEY,
Speaker of the House of Representatives

DAVID FLEMING,
Speaker of the Senate.

APPROVED—The ninth day of February, Anno Domini One Thousand, Eight Hundred and Sixty-Six.

A. G. CURTIN.

Note: According to the Regulations of Lehigh University, the Board of Trustees has provided for an extra-legal enlargement of its own membership, as follows:

"The Board of Trustees consists of ten corporate life members, in accordance with the charter provision of the University, and six members elected by the Alumni Association and approved by the Board of Trustees, one elected each year for a term of six years; also, such honorary members as may be selected by the Board.

"No officer or teacher of the University is eligible for election to the Board of Trustees.

"Six corporate members of the Board of Trustees shall constitute a quorum."

In a letter dated February 4, 1933, President C. R. Richards states that the Board at that time was composed of ten corporate members, six alumni members, and one honorary member. He says the alumni and honorary members have all the rights and privileges of other trustees except that of election to the office of President of the Board. He adds that no matters of importance are decided unless at least six corporate members of the Board are in attendance, since the charter of the University did not provide for the election of alumni and honorary members.

MARQUETTE UNIVERSITY

MILWAUKEE, WISCONSIN

A co-educational university, controlled by the Society of Jesus. Admits students of all denominations, and has faculty members of various religious beliefs. Established as St. Aloysius Academy in 1857. Incorporated as Marquette College in 1864, and as Marquette University in 1881. Comprises the College of Liberal Arts, the Graduate School, the School of Speech, and the Schools of Business Administration, Dentistry, Engineering, Journalism, Law, and Medicine. Endowment in 1930 exceeded \$2,820,000, excluding the Jesuit service endowment estimated at \$1,350,000, based on the teaching services of twenty-eight Jesuit priests, capitalized at 6%. Total annual expenditures in 1930 exceeded \$1,260,000.

CHARTER OF MARQUETTE UNIVERSITY¹

WISCONSIN LEGISLATURE PRIVATE AND LOCAL ACTS 1864

CHAPTER 180

(Published March 30, 1864).

AN ACT to incorporate "Marquette college" in the second ward of the city of Milwaukee.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. That Stanislaus P. Lalumiere, James M. Hayes and Ignatius Maes, and their successors, be and hereby are created a body corporate and politic, under the name and style of "Marquette college", and shall be trustees of said corporation for the purpose of maintaining and conducting an institution of learning, and by said corporate name to remain in perpetual succession, with full power to sue and be sued, plead and be impleaded, to receive, acquire and hold property, real and personal, by bequest, donation or purchase, and to sell, dispose of and convey the same; to have a common seal, and use, alter and renew the same; to appoint the requisite professors and teachers, and to grant such literary honors and degrees as they may deem proper.

SECTION 2. The said trustees shall have control of all funds and property that have heretofore or may hereafter be conveyed to said institution, and shall faithfully apply the same to the best of their judgment for the benefit of the institution. The said trustees shall also have power to fix the time and place of their meetings, and a majority of their number shall constitute a quorum for the transaction of business.

SECTION 3. The term of office of said trustees shall be three years, one-third of whom shall be elected annually. The first board of trustees shall be divided into three classes. The first class shall hold their offices one year, the second class two years, and the third class three years; and the offices thus vacated shall thereafter be annually filled by an election for three years, or to fill vacancies: provided, always, that the trustees shall hold their offices until others are chosen.

SECTION 4. The said institution shall be located on block one hundred and ninety-nine, in the second ward of the city of

¹From copy furnished by Dr. Edward A. Fitzpatrick, Dean of the Graduate School, Marquette University.

Milwaukee, Wisconsin; and the library, apparatus, cabinets, furniture, buildings and lots belonging to said corporation, shall be exempt from taxation: provided, they are used for no other purpose than for educational purposes.

SECTION 5. The board of trustees hereby incorporated shall hold their first meeting under this act on the first Tuesday in May, 1864, and afterwards shall meet on their own adjournment or upon a call of a majority of said board.

SECTION 6. This act shall take effect from and after its passage. Approved March 22, 1864.

AMENDMENT I

At a special meeting of the board of trustees of Marquette College, a College organized under the laws of the State of Wisconsin, which meeting was duly convened and at which meeting were present in person, A. J. Burrowes, Thomas S. Fitzgerald and Victor Putten, constituting the full board of trustees of said corporation, the following resolution was duly adopted by the unanimous vote of all the trustees:

RESOLVED That Section 4 of the charter of said Marquette College be and it hereby is amended by striking out the words in said section as follows: "The said institution shall be located on Block One hundred and Ninety-nine, in the second ward of the city of Milwaukee, Wisconsin", and by substituting in the place and stead thereof the words "The said institution shall be located at the City of Milwaukee, Wisconsin", so that said section 4 when so amended shall read as follows, to-wit: "The said institution shall be located at the City of Milwaukee, Wisconsin; and the library, apparatus, cabinets, furniture, buildings and lots belonging to said corporation, shall be exempt from taxation; provided they are used for no other purpose than for educational purposes."

State of Wisconsin }
County of Milwaukee } ss

We, the undersigned, A. J. Burrowes, President, and Thomas S. Fitzgerald, Secretary, of the board of trustees of Marquette College, a corporation, do hereby certify that the foregoing resolution amending the charter of said corporation was duly adopted at special meeting of the board of trustees of said corporation duly convened, which meeting was held at the city of Milwaukee, on the 29th day of June, 1906, and we do further certify that such amendment was adopted by the unanimous vote of the board of trustees of said corporation, and that the foregoing copy of such resolution and amendment to

the charter is a full, true and correct copy of the original thereof.

In Witness Whereof, We, A. J. Burrowes, the President, and Thomas S. Fitzgerald, the Secretary, have hereunto set our hands and caused the corporate seal of Marquette College to be affixed hereto at Milwaukee, Wis. this 29th day of June, 1906.

A. J. BURROWES, *President*

THOS. S. FITZGERALD, *Secretary*

Corporate Seal

STATE OF WISCONSIN }
Department of State } ss

Received and filed this 18th day of July, A. D. 1906.

F. M. MINER

Assistant Secretary of State.

Certificate issued July 23, 1906.

OFFICE OF REGISTER OF DEEDS

I, C. C. Maas, Register of Deeds of Milwaukee County, Wisconsin, do hereby certify that a duly certified copy of amendment to the articles of organization of Marquette College, a corporation located in Milwaukee County, which amendment had attached a certificate of the Secretary of State of Wisconsin, showing that such amendment was accepted and filed in the Department of State, was on the 19th day of July, 1906, duly left and filed for record in my office.

Witness my hand and official seal this 19th day of July 1906.

C. C. MAAS

Register of Deeds

(Seal)

Milwaukee County, Wis.

STATE OF WISCONSIN }
Department of State } ss

Received and Filed
July 23, 1906

F. M. MINER

Asst. Secretary of State.

AMENDMENT II

At a special meeting of the board of trustees of Marquette College, a corporation organized under the laws of the State of Wisconsin, which meeting was duly convened and at which

meeting were present in person, A. J. Burrowes, Thomas S. Fitzgerald and Victor Putten, constituting the full board of trustees of said corporation, the following resolution was duly adopted by the unanimous vote of all the trustees:

RESOLVED: That section 1 of the charter of said Marquette College be and it hereby is amended by striking out the words in said section as follows: "Marquette College", and substituting in the place and stead thereof the words "Marquette University", and by striking out the words "and to grant such literary honors and degrees as they may deem proper", and by substituting in place and stead thereof the words, "and to grant such honors and degrees in art, literature and science as shall be appropriate to the courses of instruction prescribed and as are usually conferred in similar institutions", so that said section when so amended shall read as follows, to-wit:

"SECTION 1. That Stanislaus P. Lalumiere, James M. Hayes and Ignatius Maes, and their successors, be and hereby are created a body corporate and politic, under the name and style of Marquette University, and shall be trustees of said corporation for the purpose of maintaining and conducting an institution of learning, and by said corporate name to remain in perpetual succession, with full power to sue and be sued, plead and be impleaded, to receive, acquire and hold property, real and personal, by bequest, donation, or purchase, and to sell, dispose of and convey the same; to have a common seal, and use, alter and renew the same; to appoint the requisite professors and teachers, and to grant such honors and degrees in art, literature and science as shall be appropriate to the courses of instruction prescribed and as are usually conferred in similar institutions."

State of Wisconsin }
County of Milwaukee } ss

We, the undersigned, A. J. Burrowes, President, and Thomas S. Fitzgerald, Secretary of the Board of Trustees of Marquette College, a corporation do hereby certify that the foregoing resolution amending the charter of said corporation was duly adopted at a special meeting of the board of trustees of said corporation duly convened, which meeting was held at the city of Milwaukee, on the 4th day of May, 1907, and we do further certify that such amendment was adopted by the unanimous vote of the board of trustees of said corporation and that the foregoing copy of such resolution and amendment to the charter is a full, true and correct copy of the original thereof.

In Witness Whereof, We, A. J. Burrowes, the President, and

Thomas S. Fitzgerald, the Secretary, have hereunto set our hands and caused the corporate seal of Marquette College to be affixed hereto at Milwaukee, Wisconsin, this 4th day of May, 1907.

A. J. BURROWES, *President*

THOS. S. FITZGERALD, *Secretary*

(Seal)

STATE OF WISCONSIN }
Department of State } ss

Received and filed this 7th day of May, A. D. 1907.

A. T. TORGE

Assistant Sec'y of State

Certificate issued May 14, 1907.

OFFICE OF REGISTER OF DEEDS

I, C. C. Maas, Register of Deeds of Milwaukee County, Wisconsin, do hereby certify that a duly certified copy of amendment to the articles of organization of Marquette College, a corporation located in Milwaukee County, which amendment had attached a certificate of the Secretary of State of Wisconsin, showing that such amendment was accepted and filed in the Department of State, was on the 13th day of May, 1907, duly left and filed for record in my office.

Witness my hand and official seal this 13th day of May, 1907.

C. C. MAAS

Register of Deeds,

(Seal)

Milwaukee County, Wisconsin

STATE OF WISCONSIN }
Department of State } ss

Received and filed May 14, 1907.

A. T. TORGE

Assistant Sec'y of State

AMENDMENT III

At a special meeting of the board of trustees of Marquette University a corporation organized under the laws of the state of Wisconsin, which meeting was duly convened, and at which meeting there were present all of the trustees in person, to-wit: Rev. Albert C. Fox, S. J., Rev. George P. Shanley, S. J., Rev.

Eugene Rudge, S. J., constituting the full board of trustees and all the members of the board of trustees of said corporation, the following resolution was duly adopted by the unanimous vote of all the trustees of said Marquette University.

RESOLVED, that Section 1 of the charter of said Marquette University, be amended so that said section 1 when amended shall read as follows:

"SECTION 1. That Stanislaus P. Lalumiere, James M. Hayes and Ignatius Maes, and their successors, be and hereby are created a body corporate and politic, under the name and style of Marquette University, and shall be trustees of said corporation for the purpose of maintaining and conducting an institution of learning, and by said corporate name to remain in perpetual succession, with full power to sue and be sued, plead and be impleaded, to receive, acquire and hold property, real, and personal, by bequest, donation or purchase, and to sell, dispose of and convey the same; to have a common seal, and use, alter and renew the same; to appoint the requisite professors and teachers, and to grant such honors and degrees in art, literature and science as shall be appropriate to the courses of instruction prescribed and as are usually conferred in similar institutions, and the said corporation is organized for the further purpose of receiving any property, real, personal or mixed, by gift, by will heretofore or hereafter made, or in any other manner given or bequeathed to it, absolutely or in trust, or for any religious, charitable or educational purpose or purposes, or for any purpose incidental thereto, or for any other lawful purpose, and to administer and execute any such trust or trusts."

STATE OF WISCONSIN }
MILWAUKEE COUNTY } ss

We, the undersigned, Albert C. Fox, S. J., President, and George P. Shanley, S. J., Secretary of the trustees of Marquette University, a Wisconsin corporation, do hereby certify that the foregoing resolution amending the charter of said corporation was duly adopted at a special meeting of the board of trustees of the said corporation duly convened, which meeting was held at the city of Milwaukee on the 16th day of May, 1923, and we do further certify that such amendment was adopted by the unanimous vote of the board of trustees of said corporation, and that the foregoing copy of such resolution and amendment to the charter of said Marquette University is a full, true and correct copy of the original thereof.

IN WITNESS WHEREOF, WE, Albert C. Fox, S. J., President, and George P. Shanley, S. J., Secretary, have hereunto set our hands and caused the corporate seal of Marquette

University to be affixed hereto at Milwaukee, Wisconsin, this 16th day of May, A. D. 1923.

ALBERT C. FOX, S. J., *President.*

GEORGE P. SHANLEY, S. J., *Secretary.*

(CORPORATE SEAL)

Subscribed and sworn to before
me this 16th day of May, 1923.

FRANCES STEINBRECHER

Notary Public, Milwaukee County, Wisconsin.

My Commission expires 11, 1926.

STATE OF WISCONSIN }
Department of State } ss

Received and filed May 18, 1923.

FRED R. ZIMMERMAN

Secretary of State

CERTIFICATE ISSUED.

May 25, 1923.

OFFICE OF REGISTER OF DEEDS

I, F. O. Phelps, Register of Deeds of Milwaukee County, Wisconsin, do hereby certify that a duly certified copy of amendment to the articles of organization of Marquette University, a corporation located in Milwaukee County, which amendment had attached a certificate of the Secretary of State of Wisconsin, showing that such amendment was accepted and filed in the Department of State, was on the 19th day of May, 1923, duly left and filed for record in my office.

Witness my hand and official seal this 19th day of May, 1923.

F. O. PHELPS

Register of Deeds

(Seal)

Milwaukee County, Wis.

STATE OF WISCONSIN }
Department of State } ss

Received and filed May 25, 1923.

FRED R. ZIMMERMAN

Secretary of State.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

CAMBRIDGE, MASSACHUSETTS

A private, non-sectarian technological and scientific school for men and women. Incorporated in 1861. Endowment in 1930, \$35,000,000. Total annual income, approximately \$3,500,000. This institution was designated as one of the beneficiaries of the Morrill Land-Grant Act of 1862, and shares the benefits of that act and certain subsequent Federal acts with the Massachusetts State College. Massachusetts is the only state having two land-grant colleges for white students.

CHARTER OF MASSACHUSETTS INSTITUTE OF TECHNOLOGY

AN ACT TO INCORPORATE THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY, AND TO GRANT AID TO SAID INSTITUTE AND TO THE BOSTON SOCIETY OF NATURAL HISTORY.¹

Be it enacted, etc., as follows:

SECTION 1. William B. Rogers, James M. Beebe, E. S. Tobey, S. H. Gookin, E. B. Bigelow, M. D. Ross, J. D. Philbrick, F. H. Storer, J. D. Runkle, C. H. Dalton, J. B. Francis, I. C. Hoadley, M. P. Wilder, C. L. Flint, Thomas Rice, John Chase, J. P. Robinson, F. W. Lincoln, Jr., Thomas Aspinwall, J. A. Dupee, E. C. Cabot, their associates and successors, are hereby made a body corporate by the name of the Massachusetts Institute of Technology,² for the purpose of instituting and maintain-

¹*Laws of Massachusetts*, 1861, Chap. 183, pp. 492-94.

²Amended, 1863, by an act giving one-third of the annual income from funds appropriated by Congress, 1862, to the Institute of Technology, on condition that the Institute maintain military training and also accept "the governor, the chief justice of the supreme judicial court and the secretary of the board of education as *ex officio* members of the governing board of the institution." *Laws of Massachusetts*, 1863, p. 496.

An act of 1869 reaffirmed the provision for *ex officio* board members and made further provisions. The act follows:

"AN ACT IN ADDITION TO THE SEVERAL ACTS INCORPORATING THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY.

Be it enacted, etc., as follows:

Section 1. All the powers and privileges now vested by law in the Massachusetts Institute of Technology, shall hereafter be exercised and enjoyed by the government of said institute, as the same is now constituted, or as the same may hereafter be constituted: *provided, however*, that the governor of the Commonwealth, the chief justice of the supreme judicial court, and the secretary of the board of education shall continue to be members of said government, as is now provided by law.

Section 2. Said government shall have power to establish any by-laws which they may deem expedient for the regulation of the affairs of said corporation: *provided*, the same are not repugnant to the general laws of this Commonwealth.

Section 3. All persons who are now associate members of said institute, or who hereafter shall become such, shall be entitled to be members of the Society of Arts, with the rights and privileges thereof, as the same are or hereafter may be established by the by-laws.

Section 4. This act shall take effect upon its passage.

Laws of Massachusetts, 1869, p. 466.

Approved March 20, 1869."

The powers of the Corporation were further affirmed by an act of 1912, expressly authorizing the Corporation to receive real and personal property by gift, devise or bequest. *Laws of Massachusetts*, 1912, p. 752.

ing a society of arts, a museum of arts, and a school of industrial science, and aiding generally, by suitable means, the advancement, development and practical application of science in connection with arts, agriculture, manufactures and commerce;³ with all the powers and privileges, and subject to all the duties, restrictions and liabilities, set forth in the sixty-eighth chapter of the General Statutes.

SECTION 2. Said corporation, for the purposes aforesaid, shall have authority to hold real and personal estate to an amount not exceeding two hundred thousand dollars.⁴

SECTION 3. One certain square of state land on the Back Bay, namely, the second square westwardly from the Public Garden, between Newbury and Boylston Streets, according to the plan reported by the commissioners on the Back Bay, February twenty-one, eighteen hundred and fifty-seven, shall be reserved from sale forever, and kept as an open space, or for the use of such educational institutions of science and art as are hereinafter provided for.

SECTION 4. If at any time within one year after the passage of this act, the said Institute of Technology shall furnish satisfactory evidence to the governor and council that it is duly organized under the aforesaid charter, and has funds subscribed, or otherwise guaranteed, for the prosecution of its objects, to an amount at least of one hundred thousand dollars, it shall be entitled to a perpetual right to hold, occupy and control, for the purposes herein before mentioned, the westerly portion of said second square, to the extent of two-third parts thereof, free of rent or charge by the Commonwealth, subject, nevertheless, to the following stipulations, namely: persons from all parts of the Commonwealth shall be alike eligible as members of said institute, or as pupils for its instruction; and its museum or conservatory of arts, at all reasonable times, and under reasonable regulations, shall be open to the public; and within two years from the time when said land is placed at its disposal for occupation, filled and graded, said institute shall erect and complete a building suitable to its said purposes, appropriately inclose, adorn and cultivate the open ground around said building, and shall thereafter keep said grounds and building in a sightly condition.

SECTION 5. The Boston Society of Natural History shall be entitled to hold, occupy and control, for the objects and purposes for which said society was incorporated, and which are

³Given power to grant degrees, *Laws of Massachusetts*, 1863, p. 182.

⁴Amended, *Laws of Massachusetts*, 1865, p. 616, to permit holdings yielding an annual income of thirty thousand dollars; amended, *Laws of Massachusetts*, 1888, pp. 55-56, to permit holdings yielding as much as one hundred thousand dollars; amended, *Laws of Massachusetts*, 1905, p. 359, to permit holdings "to any amount," provided proceeds are devoted to intended purposes.

more fully set forth in its constitution and by-laws, the easterly portion of said second square, to the extent of one-third part thereof: *provided*, that the said society shall, within two years from the time when said portion of land is placed at its disposal for occupation, filled and graded, erect a building suitable to said objects and purposes, and appropriately inclose, plant and adorn the open ground around said building, and shall thereafter keep said grounds and building in a neat and ornamental condition.

SECTION 6. The rights and privileges given in the last two sections, are granted subject to these further conditions following, namely: All buildings whatsoever, which may be erected by either of the herein-named institutions upon any portion of said second square, shall be designed and completed, the grounds surrounding said buildings inclosed, laid out and ornamented, and the said buildings and grounds kept and maintained in a manner satisfactory to the governor and council; and in case either of the said institutions shall, after due notice given, neglect to comply with the requirements of this section, or fail to use its portion of said square, or at any time appropriate said portion, or any part thereof, to any purpose or use foreign to its legitimate objects, then the right of said delinquent institution to the use, occupation or control of its portion of said square shall cease, and the Commonwealth, by its proper officers and agents, shall have the right forthwith to enter and take possession of the portion of land so forfeited.

SECTION 7. The above named societies shall not cover with their buildings more than one-third of the area granted to them respectively.

SECTION 8. The commissioners on the Back Bay are hereby instructed to reserve from sale the lots fronting on said square on Boylston, Clarendon and Newbury Streets, until said societies shall, by inclosure and improvements, put said square in a sightly and attractive condition.⁵

SECTION 9. Upon the passage of this act, the governor, with the advice and consent of the council, shall appoint three disinterested persons, who shall appraise the value of all the lands specified in the third and eighth sections of this act, and make a return of said appraisal to the governor and council; and if when the lands mentioned in section eight shall have been sold, the proceeds of such sales shall not be equal to the whole amount of the appraisal above mentioned, then the societies named in this act shall pay the amount of such deficit into the treasury of the Commonwealth, for the school fund, in proportion to the area granted to them respectively.⁵

⁵Repealed, *Laws of Massachusetts*, 1863, p. 531.

SECTION 10. This act shall be null and void, unless its provisions shall be accepted within one year, by the Massachusetts Institute of Technology, and the Boston Society of Natural History, so far as they apply to those societies respectively.⁷

Approved April 10, 1861.

JUDICIAL DECISIONS

Eligibility for Designation as Land-Grant College.

The fact that the charter of an institution was granted prior to the passage of the Act of Congress of July 2, 1862, does not make it ineligible to participate in the benefit of the fund thereby provided. Consequently, the institution incorporated by chapter 183 of the Massachusetts Statutes of 1861, to maintain a school of industrial science and to advance the arts, agriculture, manufacture, and commerce, and which was required to add military tactics to its curriculum by chapter 166 of the Massachusetts Statutes of 1863, is such an institution as was contemplated by the Act of Congress. *Massachusetts Agricultural College v. Marden*, 156 Mass. 150, 30 N. E. 555 (1892).

⁷By a number of later acts the State of Massachusetts "resolved in favor of" the Institute of Technology, giving both land and money on certain conditions.

By an act of 1873, (*Laws of Massachusetts*, 1873, pp. 597-98) the Institute of Technology was granted free use of a lot in Boston; exchanges with the City of Boston were authorized in 1875 and 1881.

Arms were supplied from time to time to enable the institution to give military training.

In 1887, (*Laws of Massachusetts*, 1887, pp. 1172-73) the General Court of Massachusetts appropriated one hundred thousand dollars to be devoted to the needs of the institution, on condition that the Institute secure an additional one hundred thousand dollars for endowment and that the Institute maintain twenty scholarships for Massachusetts pupils. An additional one hundred thousand dollars was voted in 1888 (*Laws of Massachusetts*, 1888, p. 557). Twenty-five thousand dollars, "yearly for six years," beginning, 1896, was voted in 1895, and also an additional two thousand, for six years, to be expended in maintaining ten additional scholarships to be awarded under the direction of the state board of education (*Laws of Massachusetts*, 1895, p. 666).

In 1896 a new annual appropriation of four thousand dollars to maintain forty free scholarships, was authorized and the previous provisions for scholarships repealed (*Laws of Massachusetts*, 1896, pp. 259-60).

Twenty-five thousand dollars for ten years, beginning in 1902, was "resolved" (*Laws of Massachusetts*, 1901, p. 509).

One hundred thousand dollars for ten years, beginning, January 1912, was authorized in 1911, (*Laws of Massachusetts*, 1911, pp. 1070-71) on condition that the institution secure an additional million dollars for endowment, that eighty scholarships be maintained, and that a copy of the annual reports of the president be supplied the General Court of Massachusetts annually.

Note: The institution referred to in this case is the Massachusetts Institute of Technology, which was designated to share in the benefits of the Morrill Act along with the Massachusetts Agricultural College.

The Institute still receives annually \$5,880.01 under the Morrill Act, and \$16,666.67 under the Morrill-Nelson Act of 1890.

Restriction on Use of Land. The Institute was incorporated by chapter 183 in Massachusetts Statutes of 1861. The charter provided that a certain square of land should be reserved and kept as an open space or for the use of the Institute and the Boston Society of Natural History. Subsequent sections provided that the Institute should occupy two-thirds of the square, and the Society of Natural History the remaining one-third, and that neither corporation should cover with its buildings more than one-third of the area granted to it. Though other sections of the charter had been repealed or amended, the above mentioned sections have remained untouched, and it was held that they imposed an equitable restriction on the square in favor of the surrounding lots, so that it could not be built over to exceed a third of its area, even though chapter 438 of the Massachusetts Statutes of 1903 expressly authorized it. *Wilson v. Massachusetts Institute of Technology*, 188 Mass. 565, 75 N. E. 128 (1905).

Power to Change Plan of Campus. The provision with reference to the amount of land to be occupied by the buildings was a limitation and not a condition, and the fact that the design and construction of the buildings and the arrangements of the grounds were approved by the then Governor and Council did not permanently fix their location so as to prevent their being subsequently changed, provided the new location did not constitute a breach of the limitation. *Massachusetts Institute of Technology v. Boston Society of Natural History*, 218 Mass. 189, 105 N. E. 874 (1914).

Fraternity House not Exempt from Taxation. Under clause 3, section 5, chapter 11 of the Public Statutes of Massachusetts, providing that buildings used for educational purposes shall be exempt from taxation, a fraternity chapter house for students of the Massachusetts Institute of Technology is not

exempt, because the dominant use of the building is as a dormitory and boarding house, even though some scientific and literary work may be done therein. *Phi Beta Epsilon Corporation v. Boston*, 182 Mass. 457, 65 N. E. 824 (1903).

Participation in Gordon McKay Endowment Enjoined. After Harvard University had received a gift of \$1,000,000 from Gordon McKay for the endowment of the promotion of Applied Science, the university entered into a cooperative agreement with the Massachusetts Institute of Technology, whereby not less than three-fifths of the net income of this endowment should be diverted to the Institute, for the conduct of engineering and research activities to be transferred to the Institute from Harvard University. The Supreme Judicial Court of Massachusetts, construing the will of Gordon McKay in which the gift was made, issued an injunction restraining the execution of this cooperative agreement, on the ground that the intention of the donor did not comprehend any such arrangement, and that it would therefore amount to a violation of the terms of the trust. *President and Fellows of Harvard College v. Attorney General*, 228 Mass. 396, 117 N. E. 903 (1917).

MASSACHUSETTS STATE COLLEGE

AMHERST, MASSACHUSETTS

The land-grant college of the state of Massachusetts, organized in 1863 under the Morrill Act of 1862 as the Massachusetts Agricultural College. Name changed in 1931 because the scope of the college is broader than the original name implied. The undergraduate curriculum includes opportunity for specialization in Agriculture, Horticulture, Home Economics, Physical and Biological Sciences, and Social Sciences. Total annual expenditures in 1930, about \$1,700,000, of which about 85% was derived from state appropriations.

LAWS OF THE COMMONWEALTH OF MASSACHUSETTS

(1863 CHAPTER 166)¹

An Act to Provide for the Reception of a Grant of Congress, and to Create a Fund for the Promotion of Education in Agriculture and the Mechanic Arts. *Be it enacted, etc., as follows:*

SECTION 1. The Commonwealth of Massachusetts hereby accepts a grant offered to it by the United States, as set forth and defined in an act of Congress entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts," said act being chapter one hundred and thirty of the Statutes of the United States, passed at the second session of the thirty-seventh Congress, and approved by the President, July second, in the year eighteen hundred and sixty-two, upon the terms and conditions contained and set forth in said act of Congress; and the governor of the Commonwealth is hereby authorized and instructed to give due notice thereof to the government of the United States.

SECTION 4. All moneys received by virtue of this act, for the sale of land scrip, shall be immediately deposited with the treasurer of the Commonwealth, who shall invest and hold the same in accordance with the fourth section of the aforementioned act of Congress. The moneys so invested *shall constitute a perpetual fund*, to be entitled the "Fund for the promotion of education in *agriculture and the mechanic arts*," which shall be appropriated and used in such manner as the legislature shall prescribe and in accordance with the said act of Congress.

Approved April 18, 1863.

ACT OF INCORPORATION

The Trustees of the Massachusetts Agricultural College were incorporated by the provisions of Chap. 220 of the acts of 1863. This act of incorporation was subsequently amended and the corporation finally dissolved by the following:

Chap. 223, Acts of 1864,

Chap. 378, Acts of 1871, and

Chap. 50, Resolves of 1884.²

¹*Laws of the United States and Massachusetts Relating to the Massachusetts Agricultural College with Amendments and Additions Thereto, 1863-1928*, pp. 11-15. Massachusetts Agricultural College, 1928.

²The principal provisions of these several acts were as follows:

The original act of incorporation, 1863, provided for a board of eighteen mem-

In addition to acts affecting the incorporation of the college as a whole, the legislature passed certain acts accepting federal grants for experimental and extension services and establishing appropriate branches of the college to carry out the purposes of these grants.

The General Laws of Massachusetts (1920) contain a consolidated and codified statement of all acts and laws affecting the legal status of the college up to that time, as follows:

CHAPTER 15

DEPARTMENT OF EDUCATION

DUTIES OF THE COMMISSIONER

SECTION 4. The commissioner shall be the executive and administrative head of the department. He shall have charge of the administration and enforcement of all laws, rules and regulations which it is the duty of the department to administer and enforce, and shall be chairman of the board. He shall organize in the department a division of public libraries, a division of immigration and Americanization, a division of the blind and such other divisions as he may determine. Each division shall be in charge of a director and shall be under the general supervision of the commissioner.

Amended by Chap. 322 of the Acts of 1926 by which was added: Nothing in this chapter shall be construed as affecting the powers and duties of the trustees of the Massachusetts Agricultural College as set forth in Chapter seventy-five.

TRUSTEES

SECTION 19. The trustees of the Massachusetts Agricultural College, the board of commissioners of the Massachusetts

bers, four of whom, the governor, the secretary of education, the secretary of agriculture and the President of the faculty, were members, *ex officio*. The fourteen elected members were given life tenure, unless removed by the board and vacancies were to be filled by the legislature. One-half of the eighteen were to constitute a quorum. The corporate name was, "The Trustees of the Massachusetts Agricultural College". The trustees were directed to locate the college.

By the Act of 1864, the corporate name was changed to "The Massachusetts Agricultural College" and it was declared that, "the location, plan of organization, government and course of study, prescribed for said college shall be subject to the approval of the governor and council."

By the Act of 1871, the Act of 1863 was further amended by striking out the words, "whenever vacancies occur in the board of trustees, the legislature shall fill the same," and substituting the words, "also from time to time to elect new members." The Board of Trustees was thereby made self-perpetuating.

By the Act of 1884, the power of appointment of trustees and of removal provided for in the Act of 1863 as amended in 1871, was further changed by reserving those powers to the governor, acting with the "advice and consent of the council." The term of office was changed from life tenure to seven years.

Nautical School, the trustees of the Bradford Durfee Textile School of Fall River, the trustees of the Lowell Textile School and the trustees of the New Bedford Textile School shall serve in the department.

SECTION 20. There shall be a board of trustees of the Massachusetts Agricultural College, consisting of the governor, the commissioner of education, the commissioner of agriculture and the president of the college, *ex officiis*, and not more than fourteen appointive members; provided, that the appointive members in office on May thirty-first, nineteen hundred and eighteen, shall continue in office until the expiration of their respective terms, unless sooner removed. Upon the expiration of the term of office of any appointive member, his successor shall be appointed for seven years by the governor, with the advice and consent of the council. The appointive members shall serve without compensation, but their personal and incidental expenses shall be paid as are those of trustees of other public institutions.

CHAPTER 75

MASSACHUSETTS AGRICULTURAL COLLEGE

SECTION 1. The Massachusetts Agricultural College shall continue to be a state institution.

OBJECT

SECTION 2. The leading object of the college shall be to teach subjects relating to agriculture and the mechanic arts, so as to promote liberal and practical education. Its curriculum may include other scientific and classical studies and shall include military tactics.

TRUSTEE MEETINGS

SECTION 3. The trustees shall determine the time and place of their meetings and the manner of giving notice thereof. Nine members shall be a quorum.

SEAL

SECTION 4. The college may have a common seal, which may be altered by the trustees.

EXPENDITURE OF APPROPRIATIONS

SECTION 5. Expenditures for maintenance shall be authorized by the trustees or by their duly appointed committee. The expenditure of special appropriations shall be directed by such trustees, and shall be authorized and accounted for as are appropriations for maintenance.

ACCOUNTING

SECTION 6. A complete accounting of receipts and expenditures shall be made to the governor annually. Monthly statements of receipts and expenditures shall be made to the state auditor by the treasurer, who shall keep complete records and files of pay rolls and bills in his office. There shall be a complete audit of the accounts of the college, including receipts and expenditures, under the direction of the trustees, at least twice a year.

SPECIAL TRUSTS

SECTION 7. The trustees shall administer property held in accordance with special trusts, and shall also administer grants or devises of land and gifts or bequests of personal property made to the commonwealth for the use of the college, and execute said trusts, investing the proceeds thereof in notes or bonds secured by sufficient mortgages or other securities.

REPORT

SECTION 8. The commissioner of education shall make an annual report, which, with appendices, may be printed in six parts, as follows: part one, the report of the trustees; part two, the report of the president and other officers of administration; part three, the catalogue of the college; part four, the report of the director of the Massachusetts Agricultural Experiment Station and other officers; part five, the detailed reports of the experiment station; and part six, the report of the director of the extension service.

MANAGEMENT OF STATE PROPERTY

SECTION 9. The trustees shall, on behalf of the commonwealth, manage and administer the college and all property, real and personal, belonging to the commonwealth and occupied or used by the college, and shall keep in repair houses, buildings and equipment so used or occupied.

RULES AND BY-LAWS

SECTION 10. The trustees shall make reasonable rules and by-laws consistent with law, with reasonable penalties, for the government of the college and for the regulations of their own body.

REGULATION OF COURSES OF INSTRUCTION

SECTION 11. The trustees shall determine and regulate instruction in the college.

DEGREES

SECTION 12. The trustees may confer such appropriate degrees as they may determine and prescribe.

ELECTION OF OFFICERS

SECTION 13. The trustees shall elect the president, necessary professors, tutors, instructors and other officers of the college and fix their salaries and define the duties and tenure of office. Incumbents of the above offices on May thirty-first, nineteen eighteen, shall continue in office for the terms for which they were originally elected unless sooner removed.

RIFLE RANGE

SECTION 14. The trustees shall maintain the rifle range heretofore established by law for the use of the military department of the college, and shall use therefor the land, buildings and equipment heretofore acquired therefor. The trustees shall permit the militia of the commonwealth to use such range when such use does not interfere with use by the college.

NORMAL DEPARTMENT

SECTION 15. The trustees may maintain a normal department of the college for the instruction in the elements of agriculture of persons desiring to teach such elements in public schools, at a cost not to exceed five thousand dollars annually, if fifteen persons present themselves for such instruction.

MASSACHUSETTS AGRICULTURAL EXPERIMENT STATION**NAME AND CHARACTER**

SECTION 16. The trustees shall maintain at the college an agricultural experiment station, to be known as the Massachusetts Agricultural Experiment Station, and shall use therefor the land, buildings and equipment heretofore acquired therefor and owned by the commonwealth. Such station shall be a part of the college.

NATURE AND SCOPE OF EXPERIMENTAL WORK

SECTION 17. The trustees shall cause experiments and investigations to be made at said station in the following subjects:

First, The causes, prevention and remedies of diseases of domestic animals, plants and trees;

Second, The history and habits of insects destructive to vegetation, and the means of abating them;

Third, The manufacture and composition of both foreign and domestic fertilizers, their values and adaptability to different crops and soils;

Fourth, The values, under all conditions, of forage, grain and root crops, as food for farm animals, for various purposes;

Fifth, The comparative value of green and dry forage, and the cost of producing and preserving them in the best condition;

Sixth, The adulteration of any article of food intended for the use of men or animals;

Seventh, Testing poultry to eliminate disease;

Eight, Other subjects deemed advantageous to agriculture and horticulture in the commonwealth.

OFFICERS

SECTION 18. The trustees shall appoint a director of said station, a chemist and necessary assistants, and shall provide and maintain suitable and necessary appliances for the purposes specified in the preceding section.

PUBLICATION

SECTION 19. The trustees shall publish bulletins containing the results of experiments and investigations by the station except under the following section, and shall distribute such bulletins to residents and newspapers of the commonwealth applying therefor.

SECTION 20. The director may from time to time publish in reports, bulletins, special circulars or otherwise, the results of analyses of commercial fertilizers and feedstuffs made under sections two hundred and twenty-five to two hundred and thirty-five, two hundred and fifty to two hundred and fifty-four and two hundred and fifty-six to two hundred and sixty-one, all inclusive of chapter ninety-four. Publications relative to fertilizers shall contain the cost of equivalent amounts of nitrogen, phosphoric acid, and potash or unmixed materials when bought on the market at retail for cash. Publications relative to both fertilizers and feedstuffs shall contain such additional information as to the character, composition, value and use of the fertilizers and feedstuffs analyzed as the director may see fit to include.

FEE FOR TESTING POULTRY

SECTION 21. A fee of not more than seven cents may be charged for each test of poultry made under section seventeen.

Amended by Chap. 182 of the Acts of 1922 to read ten cents instead of seven cents.

EXPERIMENTAL FARM AND BRANCH STATIONS

SECTION 22. The trustees shall maintain and manage an experimental farm to be known as the College Farm and shall use therefor the land heretofore acquired therefor. Their rules and by-laws shall make just and reasonable provision for manual labor on said farm by students of the college.

SECTION 23. The trustees shall maintain the experiment stations heretofore authorized by law for practical demonstrations in market gardening and of experimental work in planting and growing cranberries and tobacco, and shall use therefor the land, buildings and equipment heretofore acquired therefor.

EMPLOYEES

SECTION 24. Employees of the college shall be exempt from civil service laws.

SALE OR LEASE OF LANDS

SECTION 25. Subject to section twenty-seven the trustees may sell and convey, in the name of and for the commonwealth, to any professor, instructor, teacher or employee of said college, or to any society, association or fraternity established thereat, land owned by the commonwealth in Amherst or Hadley. Not more than one acre shall be so sold or conveyed to any one such person or organization. Such conveyances shall contain necessary restrictions and conditions.

SECTION 26. Subject to section twenty-seven the trustees may, in the name of and for the commonwealth, lease to any professor, instructor, teacher or employee of said college, or to any society, association or fraternity established thereat, land in Amherst or Hadley owned by the commonwealth, for the erection and maintenance of suitable dwellings thereon, at the sole expense of the lessee and for the lessee's use and occupancy. Not more than one half an acre shall be so leased to any one such person or organization. Such leases shall contain such written terms, conditions, restrictions and reservations as the parties agree upon.

SECTION 27. No sale or conveyance under section twenty-five shall become operative until it is approved by the governor and council, and no lease under section twenty-six shall become operative until the form thereof is approved by the governor and council.

SECTION 28. The lessee and his assignees shall be liable to taxation upon any building erected on land leased under section twenty-six to the extent of its value as determined by the assessors of the town wherein the land lies.

MOUNT TOBY STATE DEMONSTRATION FOREST

SECTION 29. The trustees shall protect and maintain the land owned by the commonwealth situated on or about Mount Toby, so-called, in Sunderland and Leverett, known as the Mount Toby State Demonstration Forest.

SECTION 30. The trustees shall use so much of such land as they shall determine for instruction in forestry and as a labora-

tory for research and illustration in economic questions, and for practical work in the conservation and use of forest tracts and farm wood lots.

FROM THE GENERAL ACTS

1925 CHAP. 253

An Act Accepting the Provisions of an Act of Congress Providing for the More Complete Endowment of Agricultural Experiment Stations.

Be it enacted, etc., as follows:

SECTION 1. The commonwealth of Massachusetts hereby signifies its assent to and acceptance of the provisions of the act of congress entitled, "An Act To authorize the more complete endowment of agricultural experiment stations, and for other purposes," approved February twenty-fourth, nineteen hundred and twenty-five, and its acceptance of the grants of funds therein provided for, and the trustees of the Massachusetts Agricultural College, in charge of the Massachusetts agricultural experiment station, are hereby authorized to receive the funds granted by said act and to use and expend the same in accordance with the provisions thereof and in furtherance of the purposes and objects therein set forth.

EXTENSION SERVICE

The Extension Service of the College was formally established by the appropriation act of 1912 (Chap. 279). The following acts have further reference to it.

(1914 CHAP. 721)

An Act to Accept the Grants of Money Authorized by Congress for the More Complete Endowment and Support of Colleges for the Benefit of Agriculture.

Be it enacted, etc., as follows:

SECTION 1. The commonwealth of Massachusetts hereby assents to the purpose of the advance of money authorized by the act of congress, entitled "An Act to provide for cooperative agricultural extension work between the agricultural colleges in the several states receiving the benefits of an act of congress approved July second, eighteen hundred and sixty-two, and of acts supplementary thereto, and the United States department of agriculture", said act being number ninety-five of the sixty-third congress, and approved on the eighth day of May in the year nineteen hundred and fourteen.

SECTION 2. The commonwealth of Massachusetts hereby accepts the annual grant of moneys made by the United States

as set forth and defined in said act of congress, and the treasurer and receiver general is hereby designated to receive the same annually, to be applied by him under and for the purposes of said act; and the Massachusetts Agricultural College is hereby authorized to receive said grants of money.

(1928 CHAP. 393)

An Act Accepting the Provisions of an Act of Congress Providing for the Further Development of Agricultural Extension Work Between the Agricultural Colleges in Certain States and the United States Department of Agriculture.

Be it enacted, etc., as follows:

SECTION 1. The commonwealth of Massachusetts hereby signifies its assent to and acceptance of the provisions of the act of congress entitled, "An Act to provide for the further development of agricultural extension work between the agricultural colleges in the several States receiving the benefits of the Act entitled 'An Act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts,' approved July 2, 1862, and all Acts supplementary thereto, and the United States Department of Agriculture," approved May twenty-second, nineteen hundred and twenty-eight, and its acceptance of the grants of funds therein provided for, and the trustees of the Massachusetts Agricultural College, in charge of the Massachusetts agricultural experiment station, are hereby authorized to receive the funds granted by the act hereby assented to and to use and expend the same in accordance with the provisions thereof and in furtherance of the purposes and objects therein set forth.³

JUDICIAL DECISIONS

Town Tax in Aid of the College. Chapter 195, Massachusetts Statutes of 1865, authorized the Town of Amherst to raise \$50,000 by sale of bonds and levy of taxes, in aid of the Massachusetts Agricultural College. The act was upheld as within the power of the legislature, and not unconstitutional. *Merrick v. Inhabitants of Amherst*, 12 Allen (94 Mass.) 500 (1866).

³The following acts of Federal Government having bearing on the maintenance and functions of the Massachusetts Agricultural College are included in the pamphlet (*Ibid.* pp. 1-10): First Morrill Act, Second Morrill Act, Nelson Amendment of 1908, Hatch Act, Adams Act, Purnell Act, Smith-Lever Act, Capper-Ketcham Act, and "Extracts from the National Defense Act, approved June 3, 1916, As Amended."

MICHIGAN STATE COLLEGE OF AGRICULTURE AND APPLIED SCIENCE

LANSING, MICHIGAN

An institution established by the state of Michigan in 1855, said to be the first state institution in the United States to offer instruction in scientific and practical agriculture. After the passage of the Morrill Act it was designated as the land-grant college of Michigan, and was known as the Michigan Agricultural College until the name was changed to its present form by an act of the state legislature in 1925. The Department of Mechanic Arts was opened in 1885; a course of study for women was adopted in 1896; the Veterinary Division was established in 1909. Later departments and divisions have been established as follows: Applied Science, 1921; degree course in Liberal Arts, 1924; Business Administration, 1925; Medical Biology, 1926. Productive investments in 1930 exceeded \$1,050,000, and total annual expenditures were more than \$3,520,000. The institution has been governed by the State Board of Agriculture since 1861.

LAWS RELATING TO THE MICHIGAN STATE COLLEGE OF AGRICULTURE AND APPLIED SCIENCE

CONSTITUTIONAL PROVISIONS¹

ARTICLE XI EDUCATION

State board of agriculture; election; name. SECTION 7. There shall be elected on the first Monday in April, nineteen hundred nine, a state board of agriculture to consist of six members, two of whom shall hold the office for two years, two for four years and two for six years. At every regular biennial spring election thereafter, there shall be elected two members whose term of office shall be six years. The members thus elected and their successors in office shall be a body corporate to be known as "The State Board of Agriculture."

HISTORY: New Section.

STATUTORY PROVISIONS: As to election of board, see Compilers' §§7857 and 3001.

Agricultural college; president; supervision. SECTION 8. The state board of agriculture shall, as often as necessary, elect a president of the agricultural college, who shall be *ex officio* a member of the board with the privilege of speaking but not of voting. He shall preside at the meetings of the board and be the principal executive officer of the college. The board shall have the general supervision of the college, and the direction and control of all agricultural college funds; and shall perform such other duties as may be prescribed by law.

HISTORY: New Section.

STATUTORY PROVISIONS: See generally Compilers' Ch. 137, and particularly Compilers' §§7856 and 7860.

Educational institutions; maintenance. SECTION 10. The legislature shall maintain the university, the college of mines, the state agricultural college, the state normal college and such state normal schools and other educational institutions as may be established by law.

HISTORY: New Section. See note to Sec. 8 of this article.

Salt spring lands; sale for benefit of agricultural college. SECTION 13. The legislature shall appropriate all salt spring lands now unappropriated, or the money arising from the sale of the same, where such lands have already been sold, and any *funds* or lands which may hereafter be granted or

¹Compiled Laws of the State of Michigan, 1929, pp. 234-37.

appropriated for such purpose, for the support and maintenance of the agricultural college.

HISTORY: See Const. 1850, XIII, 11, and notes thereto.

STATUTORY PROVISIONS²

CHAPTER 137—STATE COLLEGE OF AGRICULTURE AND APPLIED SCIENCE³

7855 Michigan state college of agriculture and applied science; change in name. SECTION 1. The state agricultural college, reorganized by act number one hundred eighty-eight [188] of the public acts of eighteen hundred sixty-one [1861], shall hereafter be known by the name and style of "Michigan state college of agriculture and applied science." Said Michigan state college of agriculture and applied science shall provide the inhabitants of this state with the means of acquiring a thorough knowledge of agriculture and all its allied branches, of mechanic arts, of domestic art, of domestic science, of military tactics and of military engineering, and to this end it shall afford such instruction in science, art and literature as, in the judgment of its governing body, will promote the object of the institution. Wherever reference is made in act number two hundred sixty-nine [269] of the public acts of nineteen hundred nine [1909] or any other law to the "Michigan agricultural college," such reference shall be construed to mean the "Michigan state college of agriculture and applied science" herein provided for.

HISTORY: C. L. '15, 1233;—Am. 1925, p. 217, Act 153, Eff. May 13. This act entirely supersedes Act 188 of 1861 as amended by Acts 28 of 1867, 180 of 1871, 145 of 1873, 157 of 1873, 221 of 1875, 202 of 1901 and 308 of 1905, being C. L. '97, 1834-1867;—Rep. 1915, p. 406, Act 240, Eff. Aug. 24, being Compilers' §120. See also Acts 130 of 1855, 145 [Sic. 142] of 1857, and 235 of 1859.

AGRICULTURE: See Title XII, being Compilers' §5001 et seq.

STATE INSTITUTIONS: For general provisions as to management and operation, see Compilers' Ch. 20, being Compilers' §426 et seq.

SUPERINTENDENT OF PUBLIC INSTRUCTION: Supervision of instruction by, see Compilers' §7330.

OBJECT: See Compilers' §5819.

MILITARY SCIENCE: See Compilers' §§7879 to 7881.

VETERINARY SCIENCE: Department, see Compilers' §§7882 and 7883.

²*Op. cit.*, section numbers as given in the *Compiled Laws*, 1929.

³Sections relating to military courses and department, veterinary science, interest fund, experiment stations, extension services, etc., are not reproduced in this partial copy of the contents of the *Compiled Laws*, 1929.

HISTORY

"The Agricultural College of the State of Michigan" was established by an act of 1855, (*Laws of Michigan*, 1855, Chap. 130, pp. 279-282) as follows:

[No. 130.] AN ACT for the establishment of a State Agricultural School.

SECTION 1. The People of the State of Michigan enact, That the president and executive committee of the Michigan State Agricultural Society, be and are hereby authorized to select, subject to the approval of the State Board of Education, a location and site for a state Agricultural School, within ten miles of Lansing; and subject to such approval, contract for and purchase for the State of Michigan, such lands, not less than five hundred acres, nor more than one thousand acres, in one body, for the purchase of an experimental farm and site for such Agricultural School: *Provided*, That the amount to be paid for such farm and site shall not exceed fifteen dollars per acre, and that the conveyance or conveyances be made to the State of Michigan.

SECTION 2. There is hereby appropriated twenty-two sections of salt spring lands, or the money arising from the sale thereof, referred to in article 13, section 11, of the constitution of the State of Michigan, for the purchase of land for such site and location, and the preparation thereof, the erection of buildings, the purchase of furniture, apparatus, library and implements, payment of professors and teachers, and such other necessary expenses to be incurred in the establishment and successful operation of said school.

SECTION 3. Upon the execution and delivery to the Secretary of State of the proper conveyance or conveyances of the land, the purchase of which is provided for in the first section of this act, and the certificate of the Attorney General that he has examined the title to the same, and finds it unencumbered, and that the conveyance or conveyances are executed in due form, and a certificate from the president and secretary of the Board of Education, that the same is in accordance with the contract or contracts for the purchase of the same, and that the location has been approved by them, the Auditor General shall draw his warrant or warrants on the State Treasurer for the amount of such purchase, in favor of the party or parties to whom such sum or sums shall be due, payable out of said salt spring lands, or money accruing from the sale of the same; and the said certificates in this section mentioned, shall be filed and preserved in the office of the Secretary of State.

SECTION 4. Upon the purchase of such location and site, there shall be established on such site, under the direction and

supervision of the State Board of Education, an Agricultural School, by the name and style of the Agricultural College of the State of Michigan, and the chief purpose and design of which, shall be to improve and teach the science and practice of agriculture.

SECTION 5. The course of instruction in said college shall include the following branches of education, viz: an English and scientific course, natural philosophy, chemistry, botany, animal and vegetable anatomy and physiology, geology, mineralogy, meteorology, entomology, veterinary art, mensuration, leveling and political economy, with bookkeeping and the mechanic arts which are directly connected with agriculture, and such others as the Board of Education may from time to time see fit to prescribe, having reference to the objects specified in the previous section; and the said board may establish such professorships, and employ such professors and teachers, to be called the board of instruction of said college, for the instruction aforesaid, as they may judge best for such object: *Provided*, The sum paid such professors and teachers for the first year after said college shall go into operation, shall not exceed the sum of five thousand dollars, and for the next year, not exceeding the sum of six thousand dollars, and for any years thereafter, such a sum as the State Board of Education may deem necessary, for the successful operation of the institution. Tuition in said institution shall be forever free to pupils from this State, and any number of pupils may be admitted who shall apply from any part of this State: *Provided*, That in case more pupils apply than can be accommodated or taught, then said board shall adopt some equitable plan, giving to each county a number according to the ratio of population, as it shall appear from the census last taken; and in that case, those from each county shall be admitted in the order in which they shall apply, until the quota of such county be full.

SECTION 6. There shall be two scholastic terms in each year, the first term commencing on the first Wednesday in April, and ending on the last Wednesday in October, the second term commencing the first Wednesday in December, and ending on the last Wednesday in February; and no pupil shall be received for less than one term, unless by special permission from the board of instruction.

SECTION 7. The Board of Education, upon consultation with the board of instruction, shall, from time to time, fix and establish rules as to the number of hours which shall be devoted to manual labor and to study, which may be different in different terms or seasons; but during the first term in such year, the time devoted to labor shall not be less than three nor more than four hours each day; and no student or pupil of said college

shall be exempt from such labor, except in case of sickness or other infirmity.

SECTION 8. The Board of Education shall appoint one of the professors in said college to be the president thereof, and one to be its secretary, and one to be its treasurer; and the board of instruction may establish such rules and regulations from time to time, for the government of said college and instruction therein, as they may deem proper in any matter not regulated by the Board of Education; and the rules and regulations adopted by such board of instruction, shall remain in full force until altered by said Board of Education. And said board of instruction shall have power, subject to the approval of the Board of Education, to establish by-laws for the government and discipline of the pupils of said college, in regard to conduct and behavior, and to affix such pecuniary penalties as they may deem proper, and to prescribe the causes for expulsion or dismissal of any such pupil, which by-laws shall have the force of law, unless altered, modified or repealed by the Board of Education or the Legislature; and the Board of Education shall fix the compensation to be credited or paid for the labor performed by pupils, under the provisions of section seven of this act.

SECTION 9. The president of said board of instruction shall preside at all meetings of said board, except in case of sickness or absence; in which case the board may elect one of their number president *pro tempore*; and it shall be the duty of the president to see that all the regulations established by this act by the Board of Education and by the board of instruction, in regard to the government and instruction in said college be enforced.

SECTION 10. The secretary of said board of instruction shall record all the proceedings of said board, and all regulations and by-laws for the government of said college, and shall publish the same, and furnish a copy thereof to the Governor of this State, to each member of the Board of Education, to the county clerk of each county, and to the clerk of each organized township in this State. He shall also keep a full record of all improvements and experiments made on said lands, their cost and results. He shall also keep a careful account with each field, in connection with a plan of the farming lands or farm, exhibiting the position of each, in which shall be shown the manner and cost of preparing the ground, the kind of crop, time of planting or sowing, the after condition, the time and manner of harvesting, the labor devoted to each process, and its cost price, with the cost of preparing the matured crop for market, and the price for which it was sold, and of such other matters as the Board of Education and of instruction, or either of them, may require of him; and he shall furnish a copy thereof at the end

of each term to the president of the Board of Education; and the said record shall, at all reasonable hours, be open to the inspection of any citizen of this State.

SECTION 11. The treasurer shall receive and keep all moneys arising from the sale of products of the farm, and from fines and penalties that may be imposed; and shall give bonds in such sum as the Board of Education may require. He shall pay over all moneys upon the warrant of the president, countersigned by the secretary, on account of such contingent expenses of the institution as may arise. He shall render annually, in the month of December, to the Board of Education, and as often as required by said board, a full and true account of all moneys received and disbursed by him; stating for what received and paid, and shall produce vouchers for such payments. The surplus money, if any remains in his hands at the time of rendering such account, shall, if required by said board, be paid over to the State Treasurer, to be placed to the credit of said institution.

SECTION 12. After said college shall have commenced its first term, the Superintendent of Public Instruction shall appoint visitors for the same, who shall perform the like duties required of such visitors by law, in reference to the State Normal School.

SECTION 13. This act shall take effect immediately.

Approved February 12, 1855.

The Act of 1857 (*Laws of Michigan*, 1857, No. 142) made further provision for financing of the plant.

The Act of 1859 (*Laws of Michigan*, 1859, No. 235, pp. 871-72) made additional appropriation, authorized the State Librarian to deposit certain books in the agricultural school library and decreed one collegiate term in each year commencing on the last Wednesday of February and terminating on the last Wednesday of November.

The Act of 1861 (*Laws of Michigan*, 1861, No. 188, pp. 307-16) "An act to re-organize the agricultural college of the State of Michigan, and to establish a State board of agriculture," provided for a State Board of Agriculture consisting of six members besides the Governor and the president of the State agricultural college, "who shall be *ex officio* members of the board." Each county agricultural society was authorized to nominate one person every two years and from these nominations the Governor was directed to make the needed appointments, by and with the consent of the Senate. The term of office was set at six years. Vacancies caused by death, resignation or removal from the State were to be filled "by a majority of the members." Six persons were named to constitute the first State Board of Agriculture. They were directed to choose a

secretary who, if one of their number, would not thereafter be, a vacancy being thus created, and the secretary was to serve also as a member of and the secretary of the faculty.

The following sections of the Act of 1861 stated the functions of the institution:

SECTION 13. The State agricultural school, established by act number one hundred and thirty, session laws of eighteen hundred and fifty-five, in obedience to section eleven, of art. thirteen of the constitution, shall be known by the name and style of "the State agricultural college;" the design of the institution, in fulfillment of the injunction of the constitution, is to afford thorough instruction in agriculture, and the natural sciences connected therewith; to effect that object most completely, the institution shall combine physical with intellectual education, and shall be a high seminary of learning, in which the graduate of the common school can commence, pursue and finish a course of study, terminating in thorough theoretic and practical instruction in those sciences and arts which bear directly upon agriculture and kindred industrial pursuits.

SECTION 14. No student shall be admitted to the institution who is not fifteen years of age, and who does not pass a satisfactory examination in arithmetic, geography, grammar, reading, spelling and penmanship.

SECTION 15. The course of instruction shall embrace the English language and literature, mathematics, civil engineering, agricultural chemistry, animal and vegetable anatomy and physiology, the veterinary art, entomology, geology, and such other natural sciences as may be prescribed, technology, political, rural and household economy, horticulture, moral philosophy, history, bookkeeping, and especially the application of science and the mechanic arts to practical agriculture in the field.

SECTION 16. A full course of study in the institution shall embrace not less than four years. The State board of agriculture may institute winter courses of lectures, for others than students of the institution, under necessary rules and regulations.

SECTION 17. The academical term shall extend from the last Wednesday in February to the last Wednesday in November, in each year; the vacation shall extend from the last Wednesday in November to the last Wednesday of February, and there shall be no other vacation whatever. The next term of the institution may commence at such time as the State board of agriculture shall determine. The board may at any time temporarily suspend the college in cases of fire, the prevalence of fatal diseases, or other unforeseen calamity.

SECTION 18. Three hours of each day shall be devoted by every student of the college to labor upon the farm, and no person shall be exempt except for physical disability. By a vote of the board of agriculture, at such seasons and in such exigencies as demand it, the hours of labor may be increased to four hours, or diminished to two and one half hours.

SECTION 19. The State board of agriculture shall be vested with discretion to charge tuition or not, as they may deem most conducive to the interests of the institution, unless acts of the legislature, making appropriations for its support, shall otherwise direct. The board may make discriminations in regard to tuition between students from this State and from other States. One-third of the tuition charged for the academic term shall be paid in advance, and shall be forfeited in case the student abandons the institution.

The Act of 1867 (*Laws of Michigan*, 1867, No. 28, pp. 37-38) further stipulated requirements of the Secretary in regard to reports.

The Act of 1871 (*Laws of Michigan*, 1871, No. 180, pp. 301-03) made the Governor of the State and the president of the State Agricultural College *ex officio* members of the board and required that the appointments be so made that "at least one-half of the appointed members of the board shall be practical farmers." This act also specified an academical year of not less than nine calendar months to be divided into two terms according to the judgment of the Board. The act decreed that "all agricultural operations on the farm shall be carried on experimentally, and for the instruction of the students, and with a view to the improvement of the science of agriculture in the State of Michigan." The Board was directed to report the agricultural experiments according to a specific plan outlined in the act.

An Act of 1873 (*Laws of Michigan*, 1873, No. 145, pp. 194-96) repealed the sections of the earlier act in regard to appointment of members from among those nominated by the county agricultural societies and left the Governor free to make appointments, by and with the consent of the Senate, but continued the requirement that at least one-half of the members be "practical agriculturalists."

A second act of 1873 (*Laws of Michigan*, 1873, No. 157, pp. 209-14) contained a section relative to the reports of the Secretary to the Legislature and to the Governor.

An Act of 1875 (*Laws of Michigan*, 1875, No. 221, pp. 267-68) made definite requirements in regard to reports by the superintendents of the farm and by the professors, and reaffirmed the intention that the agricultural operations be carried on experimentally.

An Act of 1901 (*Laws of Michigan*, 1901, No. 202, p. 286) amended section 24 of the act of 1861, to give the farm manager and the tutors faculty status and to permit the faculty to elect one of their own number to act as secretary.

An Act of 1905 (*Laws of Michigan*, 1905, No. 308, pp. 482-83) amended the earlier provision for the State Board of Agriculture, increasing the membership to seven and specifying that one be a resident of the Upper Peninsula and that at least three be practical agriculturalists.

The present statutory laws in regard to the Michigan State College of Agriculture and Applied Science are substantially the provisions of the Act of 1909, No. 269.

The Act of 1861 was specifically repealed by "an Act to repeal certain obsolete and inoperative laws," 1915. (*Laws of Michigan*, 1915, No. 240, pp. 405-28.)

The Act of 1925 (*Laws of Michigan*, 1905, pp. 217-18) referred to in the historical summary following section 7855 of the *Compiled Laws of 1929*, changed the name and restated the purposes of the institution.

CURRENT STATUTORY PROVISIONS

7856 Same; government. SECTION 2. The government of the Michigan agricultural college shall be vested in the state board of agriculture.

7857 State board of agriculture; election, compensation, expenses. SECTION 3. The persons elected to constitute the state board of agriculture on the first [1st] Monday in April, nineteen hundred nine [1909], as provided by section seven [7] of article eleven [11] of the constitution, shall assume the duties of their office the first [1st] Monday in January, nineteen hundred ten [1910]; and all persons elected to membership upon this board, after the year nineteen hundred nine [1909], shall likewise assume their official duties on the said first [1st] Monday in January following their election. The members of the board shall serve without compensation, but shall receive the actual and necessary expenses incurred by them in the performance of the duties of their office.

7858 Same; meetings; quorum. SECTION 4. The board shall meet quarterly at stated times at the Michigan agricultural college and may meet at such other times and places as it may determine. Four members shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time.

7859 Same; organization. SECTION 5. At its first [1st] meeting said board shall elect one [1] of its own members to be chairman of the state board of agriculture. Said chairman shall

hold his office for two [2] years and shall, in the absence of the president of the Michigan agricultural college, preside at meetings of the board, and he shall perform such other duties as may be prescribed by law or by the regulations of the board. Said board shall also at the same time elect a secretary and a treasurer, each of whom shall hold office at the will of the board, and give bonds satisfactory to said board to secure the faithful performance of the duties of his office. No member of the board shall be eligible to appointment as secretary or treasurer.

7860 Same; successor of prior board; supervisory powers; control of property; rules. SECTION 6. The state board of agriculture created by the present constitution is the successor of the state board of agriculture created by act number one hundred eighty-eight [188] of the public acts of eighteen hundred sixty-one [1861] and the title to all property held in trust, or otherwise, by said state board of agriculture created by said act number one hundred eighty-eight [188] of the public acts of eighteen hundred sixty-one [1861], shall, when this act takes effect, vest in the state board of agriculture created by the present constitution. The state board of agriculture shall have the general control and supervision of the Michigan agricultural college, the farm pertaining thereto and lands or other property, which now or hereafter may belong to said college; of all appropriations made by the state or by congress for the support of said college, or for the support of the experiment station or any sub-station, or for any other purpose for which said college is created; and also the management of all lands that may hereafter be donated by the national government to this state in trust for the promotion of agricultural and industrial pursuits. The state board of agriculture may receive, hold and manage any property granted or devised to it or to the Michigan agricultural college to promote any of the objects for which said college is created. The board shall have plenary power to adopt such ordinances, by-laws and regulations not in conflict with this act as it may deem necessary to secure the successful operation of the college and to promote its designed objects.

7861 Same; power to fix salaries and remove professors and employes. SECTION 7. The board shall fix the salary of the president, professors and other employes, and shall prescribe their respective duties; and it may remove any of these when the interests of the college shall require it.

7862 Same; courses of instruction; degrees and certificates. SECTION 8. The board shall have power to establish and regulate the courses of instruction and prescribe, with the advice of the faculty, the books to be used in the institution; and to confer such degrees and grant such diplomas and certifi-

cates as are usually conferred and granted by other institutions for similar attainments.

7863 Same; disposition of moneys. SECTION 9. The board shall direct the disposition of any moneys appropriated by the legislature or by congress for the agricultural college, for any experiment stations in connection therewith; and of any moneys otherwise received for the above purposes.

7864 Same; experiment station. SECTION 10. The board shall continue to apply the funds received from the United States government for an agricultural experiment station, referred to in act number forty-six [46] of the public acts of eighteen hundred eighty-nine [1889], to the purposes for which said experiment station was established and in accordance with the acts of congress making appropriations therefor; and it shall apply all other funds received from the same source in accordance with the terms under which they were appropriated.

7865 Same; vesting of certain swamp lands. SECTION 11. All swamp lands in the townships of Lansing and Meridian, in the county of Ingham, and in the townships of DeWitt and Bath, in the county of Clinton, hitherto granted and vested in the state board of agriculture, for the exclusive use and benefit of the Michigan agricultural college, shall, so far as they remain unsold, continue to vest in said board for the purpose above mentioned.

7866 Same; sale of swamp lands, terms, deeds. SECTION 12. The state board of agriculture shall have authority to sell and dispose of any portion of the swamp lands mentioned in the preceding section of this act, and use the same or the proceeds thereof for the purpose of draining, fencing or in any manner improving other portions of said land, or for the promotion of the purposes of the Michigan agricultural college. The terms and conditions of the sale of the portions of the above described lands thus disposed of, shall be prescribed by the state board of agriculture, and the deeds of the same, executed and acknowledged in their official capacity by the chairman and secretary of the state board of agriculture, shall be good and valid by law.

7867 Faculty; president, duties. SECTION 13. The president, professors and associate professors of the Michigan agricultural college shall constitute the faculty, which shall select some suitable person to act as secretary of the faculty. The president of the college shall be the president of the faculty, and shall be the official channel of communication between the faculty and the state board of agriculture. He shall be the administrative head of the college and, as such, shall be responsible for carrying into effect the ordinances, rules and regulations of the faculty and of the state board of agriculture.

7868 Same; rules. SECTION 14. The faculty shall pass all rules and regulations necessary to the government and discipline of the college and for the preservation of morals, decorum and health.

7869 Same; control of laboratories and library. SECTION 15. The faculty shall have charge of the laboratories, library and museums of the institution.

7870 Subordinate officers. SECTION 16. The subordinate officers and employees, not members of the faculty, shall be under the direction of the president, and in the recess of the board, removable at his discretion, and he may fill vacancies that may be thus or otherwise created; his action in these respects shall be submitted to the approval of the state board of agriculture at its next meeting.

7871 Extension and experimental work; statistical reports. SECTION 17. The board shall have power to carry on, through the faculty and officers of the college, such college extension work, such experimental work, both at the college and elsewhere throughout the state, including the publication of bulletins, and extend such educational assistance to the farmers and artisans of the state, as, in its judgment, may be for the best interests of the people at large. The board may, in its discretion, gather and publish information in regard to the resources of the state, the character of the soil in various parts, the character and quantity of crops raised, the domestic animals, the manufactures and any other statistical matter relating to Michigan.

7872 Attendance at meetings and tours of inspection, payment of expenses. SECTION 18. The board shall have power to expend the funds appropriated for the support of the college in paying the expenses of the president, secretary, professors, or other employes of the college, in attending meetings at which, in their judgment, it is desirable that the college should be represented; in inspecting the buildings, equipment, and work of other institutions; and also in accompanying students on tours of inspection to such objects of interest as are germane to their work in college.

7873 Secretary of board; duties, records. SECTION 19. The secretary shall reside at the college in the city of East Lansing, and have his office in the institution. It shall be his duty to keep a record of the transactions of the state board of agriculture, of the Michigan agricultural college, and the experiment station, which shall be open at all times for the inspection of any citizen of the state. He shall, subject to the direction of the state board of agriculture, act in the capacity of business manager of the institution, and as such, shall have

the custody of all books, papers, documents, records and other property which may be deposited in his office; he shall have the general charge, under the direction of the state board of agriculture, of the financial affairs of the institution, and of any other financial matter with the administration of which the state board may be charged; he shall keep in his office a complete record of all financial transactions, in such manner as may be approved by the board and state accountant, and shall annually, at the close of the fiscal year, make a full and detailed report of the financial affairs of the institution, together with such statistical matter as may be of interest.

7874 Same; receipt and disposition of funds; accounts.

SECTION 20. All moneys due to the institution or received in its behalf, shall be collected and received by the secretary, and deposited by him with the treasurer of the state board of agriculture; and all funds so deposited shall be subject to warrants signed by the president of the college and the secretary. The secretary shall render monthly a full and complete account of all moneys received and all warrants drawn on the treasurer, as the secretary of the college, and shall file and preserve all vouchers, receipts, correspondence, or other papers relating to it.

7875 Same; compensation. SECTION 21. The secretary shall receive as compensation for his services as secretary of the state board of agriculture, a salary of one thousand [1,000] dollars per annum, to be paid monthly from the state treasury, in the same manner as is provided by law for the payment of salaries of state officers, and as secretary of the Michigan agricultural college, and of the experiment station, such salary as the state board of agriculture shall determine, to be paid from the college and experiment station funds.

7876 Department heads; annual reports. SECTION 22. The several heads of departments of the college and of divisions of the experiment station, shall annually make written and detailed reports of the work in their hands to the president of the college, which reports shall be published in the annual report of the secretary of the state board of agriculture.

7877 Students; qualifications, tuition. SECTION 23. The state board of agriculture shall have power to determine and establish the qualifications of students for admission to the college, and all students having a lawful residence in this state and meeting the established requirements for admission, shall have the privileges of the institution without the payment of tuition, but the board may require tuition of students from other states and countries and fix the amount thereof.

7878 Repeal; exceptions. SECTION 24. All acts or parts of acts inconsistent with the provisions of this act are hereby

repealed, but this act shall not be construed to repeal act number two hundred ten [210] of the public acts of eighteen hundred ninety-seven [1897], nor act number one hundred thirty-seven [137] of the public acts of eighteen hundred ninety-nine [1899], nor act number two hundred thirty-two [232] of the public acts of nineteen hundred one [1901], as amended by act number three hundred three [303] of the public acts of nineteen hundred five [1905], and act number two hundred sixty-six [266] of the public acts of nineteen hundred seven [1907].

7884 State college of agriculture and applied science; mill tax; annual report of receipts and expenditures.

SECTION 1. There shall be assessed each year on the taxable property of the state, as last fixed by the state board of equalization, preceding the last regular session of the legislature, for the use and maintenance of the Michigan state college of agriculture and applied science, the sum of two-tenths of a mill on each dollar of said taxable property, but not to exceed the sum of one million, six hundred forty thousand, two hundred eighty-four dollars and eighteen cents in the tax year nineteen hundred thirty-one, and not to exceed the sum of one million, six hundred forty thousand, two hundred eighty-four dollars and eighteen cents in the tax year nineteen hundred thirty-two, to be assessed and paid into the state treasury of the state, in like manner as other state taxes are by law levied, assessed and paid; which tax, when collected, shall be paid by the state treasurer to the state board of agriculture of the Michigan state college of agriculture and applied science in like manner as is now provided by law; and the state board of agriculture of the Michigan state college of agriculture and applied science shall make an annual report to the governor of the state of all receipts and expenditures of the Michigan state college of agriculture and applied science: *Provided*, That the state treasurer be and is hereby authorized and directed to pay to the state board of agriculture of the Michigan state college of agriculture and applied science for the fiscal year ending June thirtieth, nineteen hundred thirty-two and for the fiscal year ending June thirtieth, nineteen hundred thirty-three, in such manner as is now provided by law, upon the warrant of the auditor general the amount of the mill tax provided by this act not in excess of one million, six hundred forty thousand, two hundred eighty-four dollars and eighteen cents for the fiscal year ending June thirtieth, nineteen hundred thirty-two, and not in excess of one million, six hundred forty thousand, two hundred eighty-four dollars and eighteen cents for the fiscal year ending June thirtieth, nineteen hundred thirty-three, and that the state treasury be reimbursed out of the taxes annually received from said mill tax when collected; and that said auditor general shall issue

his warrants therefor, as in the case of special appropriations.

This act is ordered to take immediate effect.

Approved June 16, 1931.⁴

7907 Articles by faculty; contents, publication, distribution. SECTION 2. The several professors of chemistry, zoology, botany, agriculture, horticulture, and veterinary science, shall each, at least twice in each year, not excluding the president and other professors, prepare for publication an article embracing such facts as they may deem of public importance, a copy of which shall be simultaneously sent to each and every newspaper published in the state, and to such persons as the state board of agriculture may think proper; said professors to so arrange that at least one [1] of said articles shall be sent out, as above provided, the first [1st] week of each and every month, in each and every year.

JUDICIAL DECISIONS

Constitutional Powers of the State Board of Agriculture. Section 7 of article 11 of the Michigan Constitution of 1908 gives the State Board of Agriculture the status of a constitutional corporation, and section 8 gives it exclusive control and direction of the property and funds of the Agricultural College. Thus a writ of mandamus will not be issued to prevent the board from using a part of its property and funds to erect a building to house a United States Post Office on the campus. *Bauer v. State Board of Agriculture*, 164 Mich. 415, 129 N.W. 713 (1911).

It is not within the power of the Legislature to limit the amount which the Board of Agriculture might expend to maintain the engineering and mechanical department. If the Legislature attaches such a condition to an appropriation, the Board of Agriculture has power to reject such appropriation, and insist upon its right to the exclusive control of all funds appropriated for the support of the Agricultural College. *State Board of Agriculture v. Fuller*, 147 N.W. 529, 180 Mich. 349 (1914).

No. 308 of Michigan Public Acts of 1923, subjecting appropriations to the State Board of Agriculture to supervisory

⁴This is section 7884 as amended, 1931, (*Laws of Michigan*, 1931, No. 320, pp. 546-47).

control by the State Administrative Board is unconstitutional and void in that respect. *State Board of Agriculture v. Auditor General*, 226 Mich. 417, 197 N.W. 160 (1924).

Exemption from Workmen's Compensation Law. The State Board of Agriculture not having elected to be brought within the provisions of the Workmen's Compensation Law, the Michigan Agricultural College is not subject to its terms. *Agler v. Michigan Agricultural College*, 181 Mich. 559, 148 N.W. 341 (1914).

UNIVERSITY OF MICHIGAN

ANN ARBOR, MICHIGAN

A state university, first established in 1817 as the "Catholopistemiad or University of Michigania" in Detroit. Name changed to University of Michigan in 1821. Chartered by the legislature as the University of Michigan and located at Ann Arbor in 1837. Comprises the College of Literature, Science and the Arts, the College of Engineering, the College of Architecture, the College of Pharmacy, the School of Dentistry, the Graduate School, the Law School, the Medical School, the School of Education, the School of Business Administration, the School of Forestry and Conservation, the School of Music, the Summer Session, the General Library, the Division of Hygiene and Public Health, the Museums, the University Extension Division, the Board in Control of Athletics (in charge of all physical training), the Department of Military Science and Tactics, the University Hospital and School of Nursing, and various business and maintenance departments. Endowment in 1932 exceeded \$4,425,000. Grand total annual income for the fiscal year 1931-32 was more than \$8,890,000, more than half of which was from state appropriations. The university is a constitutionally independent corporation, not subject to legislative control within the scope of its constitutional power.

LAWS RELATING TO THE UNIVERSITY OF MICHIGAN¹

ESTABLISHMENT OF THE UNIVERSITY

TERRITORIAL PERIOD

August 26, 1817. An act to establish the Catholepistemiad, or University of Michigania.²

Be it enacted by the Governor and the Judges of the Territory of Michigan, That there shall be in the said Territory a *catholepistemiad*, or university, denominated the *catholepistemiad* or university of Michigania. The *catholepistemiad* or university of Michigania shall be composed of thirteen *didaxiim* or professorships: first a *didaxia* or professorship of *catholepistemia*, or universal science, the *didactor* or professor of which shall be president of the institution; second, a *didaxia* or professorship of *anthropoglossica* or literature, embracing all the *epistemiim* or sciences relative to language; third, a *didaxia* or professorship of *mathematica* or mathematics; fourth, a *didaxia* or professorship of *physiognostica* or natural history; fifth, a *didaxia* or professorship of *physiosophica* or natural philosophy; sixth, a *didaxia* or professorship of *astronomia* or astronomy; seventh, a *didaxia* or professorship of *chymia*, or chemistry; eighth, a *didaxia* or professorship of *iātuca* [*iatrixica*] or medical sciences; ninth, a *didaxia* or professorship of *aeconomia* or economical sciences; tenth, a *didaxia* or professorship of *ethica* or ethical sciences; eleventh, a *didaxia* or professorship of *polemictactica* or military sciences; twelfth, a *didaxia* or professorship of *diegetica* or historical sciences; and thirteenth, a *didaxia* or professorship of *ennoeica* or intellectual sciences, embracing all the *epistemiim* or sciences relative to the minds of animals, to the human mind, to spiritual existence, to the Deity, and to religion; the *didactor* or professor of which shall be vice-president of the institution. The *didactors* or professors shall be appointed and commissioned by the Governor. There shall be paid from the treasury of Michigan, in quarterly payments, to the president of the institution, and to each *didactor* or professor, an annual salary, to be from time to time ascertained by

¹*University of Michigan, Its Origin, Growth and Principles of Government.* (Compiled by Regent Lucius L. Hubbard). Ann Arbor: The University of Michigan, 1923.

²*Ibid.*, pp. 1-4.

law. More than one *didaxia* or professorship may be conferred upon the same person.

The president and *didactors* or professors, or a majority of them assembled, shall have power to regulate all the concerns of the institution, to enact laws for that purpose, to sue, to be sued, to acquire, to hold and to alien property, real, mixed and personal, to make, to use and to alter a seal, to establish colleges, academies, schools, libraries, musaeums, athenoeums, botanic gardens, laboratories, and other useful literary and scientific institutions, consonant to the laws of the United States of America, and of Michigan, and to appoint officers, instructors and instructri (*sic*) in, among and throughout the various counties, cities, towns, townships, and other geographical divisions of Michigan. Their name and style as a corporation shall be "The Catholepistemiad or University of Michigania." To every subordinate instructor and instructrix appointed by the *catholepistemiad* or university there shall be paid from the treasury of Michigan, in quarterly payments, an annual salary, to be from time to time ascertained by law. The existing public taxes are hereby increased fifteen per cent; and from the proceeds of the present and all future public taxes, fifteen per cent are appropriated for the benefit of the *catholepistemiad* or university. The Treasurer of Michigan shall keep a separate account of the university fund. The *catholepistemiad* or university may prepare and draw four successive lotteries, deducting from the prizes in the same fifteen per cent for the benefit of the institution. The proceeds of the preceding sources of revenue, and of all subsequent, shall be applied, in the first instance, to the acquisition of suitable lands and buildings, and books, libraries and apparatus, and afterwards to such purposes as shall be from time to time by law directed. The *honorarium* for a course of lectures shall not exceed fifteen dollars; for classical instruction, ten dollars a quarter, and for ordinary instruction, six dollars a quarter. If the judges of the court of any county, or a majority of them, shall certify that the parent or guardian of any person has not adequate means to defray the expense of suitable instruction, and that the same ought to be a public charge, the *honorarium* shall be paid from the treasury of Michigan. An annual report of the state, concerns, and transactions of the institution shall be laid before the legislative power for the time being. This law, or any part of it, may be repealed by the legislative power for the time being.

Made, adopted, and published from the laws of seven of the original States, to-wit: the States of Connecticut, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, and Virginia, so far as necessary and suitable to the circumstances of Michigan, at Detroit, on Tuesday, the 26th day of August, in

the year of our Lord, one thousand eight hundred and seventeen.³

WILLIAM WOODBRIDGE,
*Secretary of Michigan, and at present
Acting Governor thereof*

A. B. WOODWARD,
*Presiding Judge of the Supreme Court of the
Territory of Michigan*

JOHN GRIFFIN,
One of the Judges of the Territory of Michigan.

(Terr. L., II, p. 104.)

STATEHOOD PERIOD

March 18, 1837. An Act to provide for the organization and government of the University of Michigan.⁴

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Michigan,* That there shall be established in this state an institution under the name and style of "The University of Michigan."

SECTION 2. The objects of the university shall be to provide the inhabitants of the state with the means of acquiring a thorough knowledge of the various branches of literature, science and the arts.

SECTION 3. The government of the university shall be vested in a board of regents, to consist of twelve members and a chancellor, who shall be *ex officio* president thereof; which board

³Repealed, April 30, 1821, by, "An Act for the establishment of a University in Detroit; repealing the Act of August 26, 1817, to establish a Catholepistemiad." *Ibid.* pp. 4-8.

This repealing act provided for the establishment of the University in Detroit and specified a board of "twenty-one trustees, of whom the governor of the territory, for the time being, shall always, by virtue of his office, be one . . . "The trustees were appointed by the legislature and all vacancies were to be supplied by the legislature. The trustees were empowered ". . . to appoint a president, professors, instructors and other officers, to fix their compensation, and to remove them when such trustees think proper . . . and the president shall always be, *ex officio*, a member of the corporation." Section 6 specified ". . . That persons of every religious denomination shall be capable of being elected trustees; nor shall any person as president, professor, instructor or pupil, be refused admittance for his conscientious persuasion in matters of religion, provided he shall demean in a proper manner, and conform to such rules as may be established." Section 11 of this act stated that the act was ". . . adopted from the laws of three of the original states, to wit, the states of Massachusetts, New York and Ohio, as far as necessary and suitable to the circumstances of the Territory of Michigan."

⁴*Ibid.* pp. 8-13.

shall be nominated by the governor, and appointed by and with the advice and consent of the senate.⁵

SECTION 4. The governor, lieutenant governor, judges of the supreme court and chancellor of the state, shall be *ex officio* members of said board. A secretary shall be appointed by said board, whose duty it shall be to record all the proceedings of the board and carefully preserve all its books and papers.

SECTION 5. The regents appointed by the third section of this act shall, on their first meeting, be divided by the secretary into four classes of three each, to be numbered one, two, three and four; and of four ballots, so to be numbered, the class which shall draw number one shall continue in office one year; number two, two years; number three, three years; and number four, four years.

SECTION 6. The regents to be appointed pursuant to the third section of this act, and their successors in office, shall constitute a body corporate, with the name and title of the "Regents of the University of Michigan"; with the right as such of suing and being sued, of making and using a common seal and altering the same at pleasure.

SECTION 7. The regents shall have power, and it shall be their duty, to enact laws for the government of the university; to appoint the prescribed number of professors, and the requisite number of tutors; also to determine the amount of their respective salaries; and also to appoint a steward and fix the amount of his salary.

SECTION 8. The university shall consist of three departments:

1st—The department of literature, science, and the arts.

2nd—The department of law.

3rd—The department of medicine.

In the several departments there shall be established the following professorships:

In the department of literature, science and the arts, one of ancient languages; one of modern languages; one of rhetoric and oratory; one of philosophy of history, logic and philosophy of the human mind; one of moral philosophy and natural theology, including the history of all religions; one of political economy;

⁵*Ibid.* pp. 24-25. An act of June 21, 1837 made the governor the president of the board and provided that the chancellor be elected by the board and not serve as a member of the board. An act of March 10, 1851, by specifying, "One regent to be elected in each of the judicial circuits on the first Monday in April, 1851, and every sixth year thereafter; to hold office for six years . . ." reduced the board to eight members. An act of January 29, 1858, adding the ninth and tenth judicial circuits to the preceding, thereby increased the board to ten regents. An act of March 19, 1863, reduced the number to eight and made the term of office eight years. An act of April 8, 1851 had made five a quorum for business. Article XI, Section 5, of the Constitution of 1908 (*Ibid.* pp. 37-38) made both the president of the University and the superintendent of public instruction "*ex officio* members of the board of regents with the privilege of speaking but not of voting."

one of mathematics; one of natural philosophy; one of chemistry and pharmacy; one of geology and mineralogy; one of botany and zoology; one of fine arts; one of civil engineering and architecture: In the department of law, one of natural, international and constitutional law; one of common and statute law and equity; one of commercial and maritime law: In the department of medicine, one of anatomy; one of surgery; one of physiology and pathology; one of practice of physic; one of obstetrics and the diseases of women and children; one of materia medica and medical jurisprudence: *Provided*, That in the first organization of the university, the regents shall so arrange the professorships as to appoint such a number only as the wants of the institution shall require; and to increase them from time to time, as the income of the fund shall warrant, and the public interests demand: *Provided, always*, That no new professorships shall be established without the consent of the legislature.

SECTION 9. The immediate government of the several departments shall be entrusted to their respective faculties; but the regents shall have power to regulate the course of instruction, and prescribe, under the advice of the professorship, the books and authorities to be used in the several departments; and also to confer such degrees and grant such diplomas as are usually conferred and granted in other universities.

SECTION 10. The regents shall have power to remove any professor or tutor, or other officers connected with the institution, when in their judgment the interests of the university shall require it.

SECTION 11. At their first meeting the board of regents shall appoint a secretary, librarian and treasurer, who shall hold their offices during the pleasure of the board. The treasurer shall give such bonds as the regents may direct, for the faithful performance of the duties of his office; and shall keep a true and faithful account of all moneys received and paid out.

SECTION 12. The fee of admission to the university shall never exceed ten dollars; and it shall be open to all persons resident in this state, who may wish to avail themselves of its advantages, without charge of tuition, under the regulations prescribed by the regents, and to all others under such restrictions and regulations as said regents shall prescribe.

SECTION 13. The moneys thus received shall go into the hands of the treasurer; and so much of such moneys as are needed for the purpose, shall be expended by the regents in keeping the university buildings in good condition and repair; and the balance be appropriated for the increase of the library.

SECTION 14. A board of visitors, to consist of five persons, shall be appointed annually by the superintendent of public instruction, whose duty it shall be to make a personal examina-

tion into the state of the university, in all its departments, and report the result to the superintendent, suggesting such improvements as they may deem important, which report shall be transmitted to the legislature at its next session.

SECTION 15. It shall be the duty of the regents to make an exhibit of the affairs of the university each year to the board of visitors, setting forth the condition of the university, the amount of expenditures, the number of professors and tutors, and the salaries (*sic*) of each; the number of students in the several departments and in the different classes; the books of instruction used, and such other information as the board may require, together with an estimate of expenses for the ensuing year.

SECTION 16. As soon as the state shall provide funds for that purpose, the board of regents shall proceed to the erection of the necessary buildings for the university, on the ground to be designated by the legislature, and in such manner as shall be prescribed by law.

SECTION 17. The regents shall have power, and it shall be their duty, faithfully to expend all moneys which may be from time to time appropriated for books and apparatus, for the use and benefit of the university.

SECTION 18. It shall be the duty of the board of regents, together with the superintendent of public instruction, to establish such branches of the university in the different parts of the state, as shall be from time to time authorized by the legislature; also to establish all needful rules and regulations for the government of such branches: *Provided, always,* That nothing in this shall be so construed as to grant to any such branch the right of conferring degrees; and that said branches so to be established, shall not be more than one in any one organized county of the state.

SECTION 19. In connection with every such branch of the university, there shall be established an institution for the education of females in the higher branches of knowledge, whenever suitable buildings shall be prepared, to be under the same general direction and management as the branch with which it is connected.

SECTION 20. In each of the branches of the university there shall be a department of agriculture, with competent instructors in the theory of agriculture, including vegetable physiology and agricultural chemistry, and experimental and practical farming and agriculture. Whenever such branch shall be formed, there shall also be established in each a department especially appropriated to the education of teachers for the primary schools, and such other departments as the regents shall judge necessary to promote the public welfare.

SECTION 21. Whenever the branches of such university, or any of them, shall be established, as hereinbefore provided, there shall be apportioned to each, in proportion to the number of scholars therein, such sums for the support of its professors and teachers, and also such other sums for the purchase of books and apparatus, as the state of the university fund shall warrant and allow.

SECTION 22. The first meeting of the regents of the university shall be held within three months of the time of their appointment, at such time and place as the governor of this state shall designate; and it shall be the duty of the governor of this state to give seasonable notice to each member of the board of the time and place of such meeting; subsequent meetings may be called in such manner as the regents at the first meeting may prescribe; and seven of them so assembled, shall constitute a quorum for the transaction of business, and a less number may adjourn from time to time.

SECTION 23. The board of regents are hereby authorized and required, on or before the first Monday of January next, to procure the best and most appropriate plan for the university buildings, which plan, if approved of by the governor and superintendent of public instruction, shall be adopted by the regents of the university. (Laws of Mich., 1837, No. LV, p. 102.)

March 20, 1837. An Act to locate the University of Michigan (at Ann Arbor). (Laws of Mich., 1837, No. LXX, p. 142.)

CONSTITUTIONAL PROVISIONS, 1850⁶

SECTION 6. There shall be elected in each judicial circuit, at the time of the election of the judge of such circuit, a regent of the University whose term of office shall be the same as that of such judge. The regents thus elected shall constitute the Board of Regents of the University of Michigan.

SECTION 7. The regents of the University, and their successors in office, shall continue to constitute the body corporate, known by the Name and title of "The Regents of the University of Michigan."

SECTION 8. The regents of the University shall, at their first annual meeting, or as soon thereafter as may be, elect a President of the University, who shall be *ex officio* a member of their board, with the privilege of speaking, but not of voting. He shall preside at the meetings of the Regents, and be the principal executive officer of the University. The board of regents shall have the general supervision of the University, and the direction and control of all expenditures from the University interest fund.

⁶*Ibid.* pp. 28-29.

CONSTITUTIONAL PROVISIONS, 1908⁷

ARTICLE XI

EDUCATION

SECTION 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

SECTION 3. There shall be a board of regents of the university, consisting of eight members, who shall hold the office for eight years. There shall be elected at each regular biennial spring election two members of such board. When a vacancy shall occur in the office of regent it shall be filled by appointment of the governor.

SECTION 4. The regents of the university and their successors in office shall continue to constitute the body corporate known as "The Regents of the University of Michigan."

SECTION 5. The regents of the university shall, as often as necessary, elect a president of the university. The president of the University and the *superintendent of public instruction* shall be *ex officio* members of the board of regents, with the privilege of speaking but not of voting. The president shall preside at the meetings of the board and be the principal executive officer of the university. The board of regents shall have the general supervision of the university and the direction and control of all expenditures from the university funds.

SECTION 10. The legislature shall maintain the university, the college of mines, the state agricultural college, the state normal college and such state normal schools and other educational institutions as may be established by law.

SECTION 11. The proceeds from the sales of all lands that have been or hereafter may be granted by the United States to the state for educational purposes and the proceeds of all lands or other property given by individuals or appropriated by the state for like purposes shall be and remain a perpetual fund, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and annually applied to the specific objects of the original gift, grant or appropriation.

ARTICLE XIII

EMINENT DOMAIN

SECTION 4. The regents of the university of Michigan shall have power to take private property for the use of the university, in the manner prescribed by law.

⁷*Ibid.* pp. 37-38.

JUDICIAL DECISIONS

Continuity of the Corporation. The present corporation styled "The Regents of the University of Michigan" is the same legal body which was founded in 1817, and reorganized in 1821; and grants of lands made to the corporation under its earlier charters may vest in the present corporation without further action. The conveyance of certain lots in the city of Detroit by the Governor and Judges of the Territory of Michigan to the "Trustees of the University of Michigan, their successors and assigns to the use of the University of Michigan" executed December 9, 1825, purporting to be in pursuance of the provisions of the Act of Congress of April 21, 1806, was valid. *Regents of the University of Michigan v. Board of Education of the City of Detroit*, 4 Mich. 213 (1856).

Discretion of the Regents. The financial and other interests of the university are entrusted to the judgment and discretion of the Board of Regents, and the courts will not interfere with the exercise of their discretion when there appears to be no unjustifiable delay or want of good faith in their proceedings. Under a statute directing that a professor of homeopathy be appointed in the Department of Medicine, a writ of mandamus to compel the regents to make the appointment was denied, upon the showing that the appointment was one likely to interfere with the harmony of the institution and therefore requiring great care and deliberation in making, and that the regents had commenced and were still making the investigation necessary to enable them to make a proper appointment. *People ex rel. Drake v. University of Michigan*, 4 Mich. 98 (1856).

Power to Hold and Convey Real Estate. The Regents of the University of Michigan have power to take, hold and convey real estate, for any purpose tending to promote the interests of the university, to increase its funds, or otherwise to further the great public objects for which the corporation was created. Where suit was brought by the regents to recover the purchase price of lands sold by them, it was held that the regents were vested with title to the lands and with power to convey them without special legislative authority. *Regents of the University of Michigan v. Detroit Young Men's Society*, 12 Mich. 138 (1863).

Forfeiture of Conditional Appropriation. The Auditor General can not be compelled to pay a certain sum which the Legislature appropriated to establish a school of homeopathy, "provided that the Regents of the university shall carry into effect the law which provides that there always be at least one professor of homeopathy in the Department of Medicine," after which the regents provided for a separate school of homeopathy, to be located at a place agreeable to them, but other than the place where the university was situated. *People v. Auditor General*, 17 Mich. 161 (1868).

Mill Tax and Continuing Appropriation. Act number 59 of 1867 provided that in that year and each year thereafter a tax of one-twentieth of a mill should be levied for the benefit of the university. Act number 14 of 1869 provided for an appropriation in 1869 and each year thereafter, of \$15,000 out of the state treasury for the maintenance of the university; and that the fund accumulated under the act of 1867 should also be paid to the university. On petition of the treasurer of the Board of Regents the Supreme Court ordered the Auditor General to authorize payment to the university of whatever should be collected under the act of 1867, as well as the sum appropriated by the act of 1869. *People ex rel. McIntyre v. Auditor General*, 19 Mich. 13 (1869).

Independence of Legislature. A law of 1855 assumed to limit the power of the regents to regulate and manage the university, by enacting the following proviso: "Provided, that there shall always be at least one professor of homeopathy in the department of medicine." Application for a mandamus to compel the appointment of such a professor was not granted, the supreme court being equally divided upon the question whether the legislature had power under the constitution to exercise any such control over the regents, who are vested with "the general supervision of the university, and the direction and control of all expenditures from the university interest fund", by Section 8 of Article 13 of the constitution of Michigan. *The People v. the Regents of the University*, 18 Mich. 469 (1869).

Five years later the court declined to grant a mandamus to compel the regents of the university to appoint, install and maintain two professors of homeopathy in the department of

medicine of the university, in accordance with the provisions of a legislative act of 1873. *The People ex rel. Attorney General v. Regents of the University*, 30 Mich. 473 (1874).

Accounting of Chemical Laboratory Funds. Where the director of the chemical laboratory, in presenting his annual statements to the Board of Regents, made claim for moneys advanced, it was held that in the absence of any fraud or concealment as to such claim, and if the moneys were expended for purposes that the board could have authorized, the board's ratification and allowance of the claims with interest was final, if made with full knowledge; and, in the absence of fraud, knowledge would be presumed. *Regents of the University v. Douglas*, 45 Mich. 284, 4 N. W. 738; *Same*, 5 N. W. 674 (1880). *Regents of State University v. Rose*, 45 Mich. 284 (1881).

Tax Exemption. The Regents of the University of Michigan, who are declared a body corporate by sections 7 and 8 of article 13 of the Michigan Constitution of 1850, and given general supervision over the university, which is supported by public taxation, are a public corporation constituting a department of the state; and property owned by them is within the protection of subdivision one, section 3, No. 153, Michigan Public Acts of 1885, which exempts from taxation all public property belonging to the state. *Auditor General v. Regents of University*, 83 Mich. 460, 47 N. W. 440, 10 L. R. A. 376 (1890).

Constitutional Independence. The Board of Regents is a constitutional corporation, possessing exclusive power to control the property and funds of the university; and the university property is not within the purview of the statute directing that sufficient security shall be required by bond for the payment by the contractor and all sub-contractors for labor and materials furnished in the erection of buildings at the expense of the state or of any county, city, village, township or school district thereof. *Weinberg v. Regents of University*, 97 Mich. 246, 56 N. W. 605 (1893).

The Board of Regents and the Legislature derive their power from the same supreme authority, namely, the Constitution. They are separate and distinct constitutional bodies. No other conclusion is possible than that the intention was to place the university in the direct and exclusive control of the people

themselves, through a constitutional body elected by them. The Legislature is without authority to interfere in the management of the university, and Act No. 257, Laws of 1895, directing the removal of the university homeopathic medical college to Detroit, is invalid. *Sterling v. Regents of the University of Michigan*, 110 Mich. 369, 68 N. W. 253, 34 L. R. A. 150 (1896).

Regents Control Expenditures. Act No. 102, Public Acts of 1899, providing a one-fourth mill tax for the maintenance of the state university, containing the proviso that the state treasurer pay the regents upon the warrant of the auditor general the amount of the tax, in the manner provided by law, was not intended to change the settled policy of the state and to subject the constitutional control of the board of regents to the judgment of the auditor general; nor was it intended to graft upon the appropriation all the conditions and restrictions of the accounting laws under which the auditor general is required to audit expenditures for lawful purposes. The auditor general was compelled by the writ of mandamus to perform the ministerial duty devolving upon him under said act, and to approve and issue warrants upon the state treasurer to pay for the expenditure of moneys authorized by the board of regents for the purpose of enabling the president of the university to attend alumni meetings, inaugurations, etc., and other like university purposes. *Board of Regents of the University of Michigan v. Auditor General*, 167 Mich. 444, 132 N. W. 1037 (1911).

Rate of Interest on University Funds. The act providing for the payment of interest on the university fund impliedly adopted the legal rate of interest fixed by the general statute then in force, which was seven per cent per annum. This rate was not changed or affected by the amendments of 1887 and 1891 reducing the legal rate of interest to six per cent. The regents of the university were granted a writ of mandamus to compel the auditor general to pay interest on the university fund at the rate of seven per cent. *Regents of University of Michigan v. Auditor General*, 109 Mich. 134 (1896).

Eminent Domain. Although the board of regents of the University of Michigan is a separate entity independent of the state as to the management and control of the university, it is

nevertheless a department of the state government and the real estate which it holds or acquires is public property belonging to the state. The land acquired by condemnation proceedings by the regents for the erection thereon by an alumnus of a building to house a "Lawyers' Club", to which all members of the law school and all lawyers are eligible is held for a public purpose. The club provides sleeping, study, and dining accommodations for law students, and all profits from its operation are to be used for legal research. *People v. Brooks*, 224 Mich. 45, 194 N. W. 602 (1923).

Eminent Domain: Land for Golf Course. The Regents of the University of Michigan instituted proceedings under Act number 236, Public Acts of 1911 (1 Compiled Laws 1915, section 349 et seq.), which authorizes the state to condemn private property for public use, to acquire 10½ acres of defendant's land to be used as a golf course. The Regents had enacted a resolution declaring it necessary, for the development of physical education as an integral part of a broad program of education, to acquire the property for the use of the university. A jury in the Washtenaw circuit found the taking of the land to be necessary and awarded the defendant suitable compensation. On appeal to the Supreme Court it was held immaterial that the land might be controlled by the non-profit corporation known as the Board of Control of Athletics of the University of Michigan, and paid for out of its funds; for this corporation, though a separate entity, is merely an operating agency of the Board of Regents in the management of designated educational activities, at all times under full control of the Regents. *People ex rel. Regents of the University of Michigan v. Pommerening*, 250 Mich. 391, 230 N. W. 194 (1930).

Liability for Injury to Spectator at Football Game. The Athletic Association of the university, which erected a stand upon the athletic field to accommodate patrons of athletic exhibitions, is liable for injuries to a patron through the collapse of the stand due to its negligent construction, although it could not have been constructed without the knowledge and consent of the authorities of the university, and the director who supervised its erection was employed and paid by the university as advisor of the athletic policy of the association. *Scott v. Uni-*

versity of Michigan Athletic Association, 116 N. W. 624, 152 Mich. 684, 17 L. R. A. N. S. 234, 125 Am. St. Rep. 423, 15 Ann. Cas. 515, 117 N. W. 729, 154 Mich. 328 (1908).

Liability for Injury to Patient in Hospital. The board of regents of the University of Michigan, in maintaining and exercising general supervision of the University hospital, an adjunct of the State medical school, a state educational instrumentality maintained by the public at public expense, is exercising a governmental function and therefore is not liable for the negligence of one of the university surgeons in performing a surgical operation, notwithstanding it is a public body corporate having the right of suing and being sued in a proper case involving property rights or based on contract relations. The University hospital is within the rule which exempts public charitable and eleemosynary institutions from liability for the torts of their servants. *Robinson v. Washtenaw Circuit Judge*, 228 Mich. 225, 199 N. W. 618 (1924).

Liability as Negligent Landlord. The University of Michigan owned a lot abutting plaintiff's lot at the rear, and permitted the tenant thereof to build a barn so close to the line and to plaintiff's barn that both barns were destroyed by a fire started by a negligent trespasser in the one on university land. In the trial court a verdict against the university and its superintendent of buildings and grounds was had, but judgment was entered against the latter only, the university being absolved from liability under authority of *Robinson v. Washtenaw Circuit Judge*, 228 Mich. 225, 199 N. W. 618 (1924). On appeal, judgment against the superintendent of buildings and grounds was reversed, since there had been no violation of the housing code and his countenancing of the construction of the barn did not constitute actionable negligence. *Herrst v. Regents of the University of Michigan*, 231 Mich. 396, 204 N. W. 119 (1925).

UNIVERSITY OF MINNESOTA

MINNEAPOLIS, MINNESOTA

A state university, chartered by the Territorial Assembly in 1851. Consists of the College of Science, Literature and Arts, the College of Engineering and Architecture, the Law School, the School of Chemistry, the Department of Agriculture, the Medical School, the College of Dentistry, the School of Mines, the College of Pharmacy, the College of Education, the Graduate School, the School of Business and the Extension Division. Endowment in 1931 exceeded \$10,085,000. Total annual income from all sources more than \$11,300,000. The Board of Regents has been declared to be constitutionally independent of all other executive authority.

STATE LAWS AFFECTING THE UNIVERSITY OF MINNESOTA¹

SESSION LAWS PRIOR TO THE ADOPTION OF THE CONSTITUTION

AN ACT to incorporate the University of Minnesota at the Falls of St. Anthony (Laws 1851, Chap. 3).²

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,

SECTION 1. That there shall be established in this Territory an institution under the name and style of the University of Minnesota.

SECTION 2. The proceeds of all lands that may hereafter be granted by the United States to the Territory for the support of a University, shall be and remain a perpetual fund to be called the "University Fund," the interest of which shall be appropriated to the support of a University, and no sectarian instruction shall be allowed in such University.

SECTION 3. The object of the University shall be to provide the inhabitants of this Territory with the means of acquiring a thorough knowledge of the various branches of literature, science and the arts.

SECTION 4. The government of the University shall be vested in a board of twelve regents, who shall be elected by the legislature as hereinafter provided.

SECTION 5. The members of the board of regents shall be elected at the present session of the legislature and shall be divided into classes numbered one, two, and three; class numbered one shall hold their offices for two years; class numbered two, for four years; and class numbered three, for six years from the first Monday of February, one thousand eight hundred

¹*Laws and Regulations Governing the University of Minnesota.* Minneapolis: The University of Minnesota Press, 1931.

²The first laws giving impetus to the establishment of the University of Minnesota were the acts of Congress, 1849 and 1851 (9 Statutes-at-Large, p. 408 and 9 Statutes-at-Large, p. 568) first setting aside lands to the extent of two sections numbered 16 and 36 in each township, for schools in the territory and the second specifically authorizing and directing the Secretary of the Interior to set apart and reserve for sale out of any of the public lands within the Territory of Minnesota to which the Indian title has been or may be extinguished, and not otherwise appropriated, a quantity of land not exceeding two entire townships for the use and support of the University in said Territory and for no other use or purpose whatsoever, to be located by legal subdivisions of not less than one entire section. Subsequent acts of Congress allowed title to the lands and gave the Legislature of Minnesota jurisdiction over them. *Ibid.* pp. 1-2.

and fifty-one; biennially thereafter there shall be elected in joint convention of both branches of the legislature, four members to supply the vacancies made by the provisions of this section and who shall hold their offices for six years respectively.

SECTION 6. Whenever there shall be a vacancy in the office of regent of the University, from any cause whatever, it shall be the duty of the Governor to fill such office by appointment, and the person or persons so appointed shall continue in office until the close of the session of the legislature, then next thereafter, and until others are elected in their stead.

SECTION 7. The regents of the University and their successors in office shall constitute a body corporate with the name and style of the "Regents of the University of Minnesota," with the rights of such, of suing and being sued, of contracting and being contracted with, of making and using a common seal and altering the same at pleasure.

SECTION 8. The Regents shall appoint a Secretary, a Treasurer, and a Librarian who shall hold their respective offices during the pleasure of the board. It shall be the duty of the Secretary to record all the proceedings of the board and carefully preserve all its books and papers; the treasurer shall keep a true and faithful account of all moneys received and paid out by him, and shall give such bonds for the faithful performance of the duties of his office as the regents may require.

SECTION 9. The regents shall have power, and it shall be their duty to enact laws for the government of the University; to elect a Chancellor who shall be *ex officio* president of the board of regents or when absent or previous to the election of such Chancellor the board may appoint one of their own number president pro tem. They may also appoint the requisite number of professors and tutors, and such other officers as they may deem expedient, also determine the amount of their respective salaries, provided that the salaries thus determined shall be submitted to the legislature for their approval or dissent.

SECTION 10. The University shall consist of five departments: The department of science, literature, and the arts; the department of law; the department of medicine; the department of theory and practice of elementary instruction; the department of agriculture. The immediate government of the several departments shall be entrusted to their respective faculties, but the regents shall have power to regulate the course of instruction and prescribe, under the advice of the professorships, books and authorities to be used in the several departments and also to confer such degrees and grant such diplomas as are usually conferred and granted by other universities.

SECTION 11. The regents shall have power to remove any

officer connected with the institution when in their judgment the interest of the University requires it.

SECTION 12. The admission fee to the University and the charges for tuition in the several departments thereof shall be regulated and prescribed by the board of regents; and as soon as in their opinion the income of the University fund will permit, tuition in all of the departments, shall be without charge to all students in the same who are residents of the Territory.

SECTION 13. The University of Minnesota shall be located at or near the falls of St. Anthony, and the regents, as soon as they may deem expedient, shall procure a suitable site for the erection of the University buildings, and they may proceed to the erection of the same as soon as funds or plans may be approved by a majority of said board.

SECTION 14. The regents shall have the power and it shall be their duty as soon as the requisite funds shall have been secured for that purpose to establish a preparatory department of said University, and employ teachers for the same, who shall be qualified to give instruction in all the branches of learning usually taught in academies; which preparatory department may be discontinued whenever the regents may think proper, after the other departments of said University shall have been established.

SECTION 15. The regents are authorized to expend such portion of the fund which by the provisions of this chapter may come under their control as they may deem expedient, for the erection of suitable buildings and the purchase of apparatus, a library, and a cabinet of natural history; and the selection, management and control of all lands, which may hereafter be granted by congress for the endowment of said University is hereby vested in the board of regents.

SECTION 16. The regents shall make a report annually to the legislature at its regular session, exhibiting the state and progress of the University in its several departments, the course of study, the number of professors and students, the amount of expenditures and such other information as they may deem proper or may from time to time be required of them.

SECTION 17. Meetings of the board may be called by any seven members thereof, at such time and place as they may deem expedient and a majority of said board shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time.

SECTION 18. The regents, if they shall deem it expedient, may receive into connection with the University any college within the Territory upon application of the board of trustees; and such college so received shall become a branch of the University and be subject to the visitation of the regents.

SECTION 19. No religious tenets or opinions shall be required to entitle any person to be admitted as a student in said University, and no such tenets or opinions shall be required as a qualification for any professor, tutor, or officer of said University.

SECTION 20. The legislative assembly may at any time alter, amend, modify or repeal this chapter.

Approved February 25, 1851.

THE CONSTITUTION OF MINNESOTA

ARTICLE 8, SECTION 4³

The location of the University of Minnesota as established by existing laws, is hereby confirmed, and said institution is hereby declared to be the University of the State of Minnesota. All the rights, immunities, franchises and endowments heretofore granted or conferred are hereby perpetuated into the said University, and all lands which may be granted hereinafter by Congress, or other donations for said University purposes shall vest in the institution referred to in this section.

Ratified and adopted by the people October 13, 1857.

SESSION LAWS SUBSEQUENT TO THE ADOPTION OF THE CONSTITUTION

STANDING APPROPRIATION

There is hereby annually appropriated for the general maintenance of the university:

1. The interest and income of the permanent university fund, arising from the sale of lands granted to the state by act of Congress entitled "An act donating lands to the several states and territories which may provide colleges for the benefit of agriculture and mechanic arts," approved July 2, 1862, or from any other source.

2. The proceeds of twenty-three one hundredths mills on the dollar of the state school tax.⁴

The lands granted by the general government to the state to aid in the development of brines, and known as the state

³*Ibid.* p. 89.

⁴The most recently enacted section on this subject is as follows:

State school tax.—There shall be levied annually upon the taxable property of the state a tax of one and twenty-three one-hundredths mills on the dollar, to be known as the state school tax, of which one mill on the dollar shall be added to the general school fund, which shall then be known as the current school fund, and the remainder of such tax shall be added to the university fund. (Mason's Minn. G. S., 1927, sec. 2011.)

salt lands, and those granted by an act of Congress entitled "An act granting land to the said state," approved March 3, 1879, and the funds arising from their sale, are hereby appropriated for the completion of the geological and natural history survey. (R. L. '05, sec. 1483.)

POWER TO ACCEPT AND ADMINISTER GIFTS⁵

3117. Power to accept bequests, etc. The University of Minnesota may accept, in trust or otherwise, any gift, grant, bequest or devise for educational purposes, and may hold, manage, invest and dispose of the same and the proceeds and income thereof, in accordance with the terms and conditions of such gift, grant, bequest or devise, and of the acceptance thereof; and any person or persons contributing not less than fifty thousand dollars (\$50,000) to the university may endow a professorship therein, the name and object of which shall be determined by the board of regents. ('05, c. 187, sec. 1.)

3118. Gift or bequest, how used. If the purposes of such gift, grant, devise or bequest are not otherwise limited by the donor the University of Minnesota may use the same or the proceeds thereof for any of the purposes of the university, and may, among other things, construct buildings and acquire land. In case it is desired to use the same for the acquisition of land the power of eminent domain may be exercised either in accordance with sections 4085 to 4091, inclusive, General Statutes 1894, or chapter 41 of the Revised Laws 1905. ('05, c. 187, sec. 2.)

MANAGEMENT OF THE UNIVERSITY—BOARD OF CONTROL⁶

3140. Board of control divested of authority—How managed. Upon and after August first (1st), nineteen hundred five (1905), the board of control of this state shall be and is hereby divested of all authority, jurisdiction and control over the state university and the state normal schools of the State of Minnesota, except as hereinafter stated.

The state university on and after said date shall be under the management, jurisdiction and control of the board of regents of the state university, and the state normal schools on and after said date, shall be under the management, jurisdiction, and control of the state normal school board; and the said board of regents and said normal school board shall, on and after said date, have and possess all of the powers, jurisdiction and authority, and shall perform, subject to the restrictions herein contained, all of the duties by them possessed and performed on

⁵*Ibid.* p. 124.

⁶*Ibid.* pp. 137-138.

and prior to April first (1st), nineteen hundred one (1901), except as hereinafter stated. ('05, c. 119, sec. 1.)⁷

⁷Section 3146, (Mason's Minn. G. S. 1927) *Ibid.* pp. 140-41, states that, "the board of control shall have and exercise full authority in all financial matters of the several institutions named in this act, so far only as relates to the erection and construction of new buildings, the purchasing of fuel, and the placing of insurance on buildings and contents."

The status of the Board of Regents as the governing body of the University was further established by court ruling and by the opinion of the Attorney General, reported as follows:

State ex rel. University of Minnesota and others v. Ray P. Chase
(*Ibid.* pp. 152-54. See Judicial Decisions, *Infra.*)

July 27, 1928

State Organization Act of 1929 construed.—1. L. 1925, c. 426, the act "in relation to the organization of the state government," construed to include the state university as one of the agencies of state government intended to be subjected to the control of the governor through the Commission of Administration and Finance. That the university is a body corporate with a large degree of independence does not prevent its being considered, from the standpoint of functions and purposes, an instrument or agency of the state to accomplish the governmental end of higher education.

Board of Regents of State University independent of other executive authority.—2. The Board of Regents was incorporated by the territorial assembly (L. 1851, c. 3) with the right to "govern" the university. By the state constitution (art. 8, s. 4) all the "rights, immunities, franchises and endowments" so granted were "perpetuated unto" the university. Accordingly, the Board of Regents, in the management of the university, is constitutionally independent of all other executive authority; and in so far as L. 1925, c. 426, attempts to subject the control of university finances to the supervision of the Commission of Administration and Finance it is unconstitutional.

Legislature may not place power over university affairs elsewhere.—3. The distinction between the function of the legislature and that of the regents, in respect to the university, is that between legislative and executive power. All the executive power over university affairs having been put in the regents by the constitution, none of it may lawfully be exercised or placed elsewhere by the legislature.

When adverse practical construction of constitution is disregarded.—4. That result held so plainly a necessary consequence of the constitutional confirmation of the independent power of the Board of Regents that an adverse practical construction is disregarded. In construing a constitutional provision resort must first be had to its letter and spirit in their application to the subject matter. If the meaning is plain, without going farther, it is not permissible to adopt any different practical construction, however well established it may be.

The following letter from the Attorney General was presented to the Board:

University of Minnesota,
Hon. Fred B. Snyder,
Minneapolis, Minnesota.

August 17, 1928

My dear Senator:

By your letter of August 14th you propound the following questions relative to the present membership of the board of regents of the university:

1. In your judgment should the board now sit with its ten appointed members and be presided over by President Coffman, who has already been elected by the board as president (that is chancellor), on the assump-

tion that the governor may, or may not, appoint two additional members to make a full board of twelve; or

2. Is it your opinion that the present board should continue to act as now constituted and organized until the legislature meets?

Under the recent decision of our supreme court, it is my opinion that the organization of the board of regents is controlled by chapter 28 of the 1851 Statutes. The right of succession of the corporation through the selection of the members of the board of regents is integral with the existence of the corporation itself, and under the principles laid down by the supreme court the legislature was without power to alter the method of succession provided for by the 1851 statute. That statute provides for a board of twelve regents to be elected in joint convention of both branches of the legislature for the terms therein provided. It is clearly the right and the duty of the legislature to elect the members of the board in the first instance. However, the statute further provides that:

"Whenever there shall be a vacancy in the office of regents of the university, from any cause whatever, it shall be the duty of the governor to fill such office by appointment, and the person or persons so appointed shall continue in office until the close of the session of the legislature, then next thereafter, and until others are elected in their stead."

No regents have been elected by the legislature for many years. Ten members have regularly been appointed by the governor, and three—the governor, the commissioner of education and the president of the university—have acted as members *ex officio*, all under a subsequent statute so providing.

It is my opinion that the ten members appointed by the governor are *de jure* members. It is true that the appointments were made under an ineffective statute, but the fact remains that the legislature's failure to act left vacancies in the membership of the board, that the governor had authority to fill them by appointment, and that he has so filled them. The ten members so appointed now constitute the board of regents and will continue in office at least until the close of the next session of the legislature.

The governor, the commissioner of education and the president of the university are not *de jure* members of the board of regents, for the reason that they have not been selected as such in accordance with the terms of the statute of 1851. The question then arises whether they are *de facto* members under color of authority of the statute by virtue of which they have assumed to act. They were undoubtedly such members prior to the recent decision of our supreme court; but it is my opinion that, since the necessary result of that decision is to render unconstitutional the act under which they have assumed to hold office, their membership no longer exists in any character.

It follows, then, that there are two vacancies in the membership of the board. The governor may fill those vacancies by appointment under the statute of 1851. I might add that such appointments may be made even though the three *ex officio* members mentioned were members *de facto*, for a *de facto* member must yield to a member *de jure*.

The statute of 1851 requires the board of regents to elect a chancellor of the university, and provides that the chancellor shall be *ex officio* president of the board of regents. The election by the board of a president of the university probably satisfies this requirement and permits him to act as president of the board of regents; but I would suggest that the board provide by resolution to designate him chancellor as well.

Yours truly,

G. A. YOUNGQUIST,
Attorney General

3141. University—Purchasing agent—Estimates—Disbursements. Upon the date of assumption by the board of regents of the said management and control of the said university, the president of the said board of regents by and with the consent and approval of the members of said board, shall appoint a purchasing agent, whose duties shall be as herein provided for, and whose compensation shall be fixed by the said board of regents and paid out of the funds provided for the maintenance of said university. The said purchasing agent shall attend to the purchasing of all necessary supplies for the several departments of the state university. Previous to the termination of each quarterly period of the year the dean or other executive head of each of the several departments of the state university shall prepare estimates in detail of all the supplies required for such department for the ensuing quarterly period. Prior to the opening of such quarterly period such estimates shall be submitted by the said dean or other executive head of each of said departments to the executive committee of said board of regents, which estimate so submitted shall be carefully examined and, if necessary, revised by said executive committee. Upon the approval of such estimate by such executive committee the same shall be prepared in triplicate, and one of said estimates shall be retained by the said board of regents, and one thereof shall be delivered to and filed with said purchasing agent, and one thereof shall be delivered and filed with the state auditor of this state. Such estimates, bearing such approval, shall govern and control said purchasing agent in the purchasing of supplies for the several departments of the state university. No disbursements for such purposes shall be made except on the warrant or requisition of said purchasing agent. The said purchasing agent shall give bond in such sum as said board of regents shall require for the faithful and diligent performance of his duties. ('05, c. 119, sec. 2.)

JUDICIAL DECISIONS

University Property is State Property. The titles to the lands reserved for the use and support of the state university remains in the state, and not in the corporation; and all property acquired by the regents, or funds placed at their disposal, remain the property of the state, of which they are the mere trustees or agents. *Regents of State University v. Hart*, 7 Minn. 61 (Gil. 45) (1862).

Liability for Injury to Spectator at Football Game. When one who had paid admission to a football game was in-

jured by the collapse of the platform upon which he was standing, and sued the University Athletic Association for damages for injuries then sustained, it was held that the Athletic Association was a part of the university and an agency of the Board of Regents, such that if any liability existed, it rested upon the university. The university, being an agency of the state, is immune from such liability unless it is imposed by statute. *George v. University of Minnesota Athletic Association*, 107 Minn. 424, 120 N. W. 750 (1909).

Constitutional Independence. The Board of Regents, in the management of the university is independent of all other executive authority by virtue of article 8, section 4 of the Minnesota Constitution; and that part of chapter 426, Minnesota Laws of 1925, purporting to subject the Board of Regents to the control of the Governor through the State Commission of Administration and Finance, is unconstitutional and void. No executive authority is authorized to approve or disapprove items of expenditure by the Board of Regents, since its control of the university is made complete and exclusive by the constitution. *State v. Chase*, 175 Minn. 259, 220 N. W. 951 (1928).

The constitutional independence of the Board of Regents enables it lawfully to construct dormitories on the amortization plan without specific statutory permission, such as has been given to the state universities in several other states. The university is not above the law, but the Board of Regents has constitutional power to manage its internal affairs with a large degree of independence. It does not rule, but serves, the state. *Fanning v. University of Minnesota*, 183 Minn. 222, 236 N. W. 217 (1931).

Railroad Across University Lands. The University of Minnesota was denied an injunction to prevent the construction of a railroad across its lands near its campus. The court found that the disturbance likely to be occasioned to educational work of the university by the noise and jar of trains on a road which is laid in a cut 30 feet deep and which is 600 feet from a university building, and separated from the campus by a street, is not sufficient to warrant the interference of the court. *University of Minnesota v. St. Paul and N. P. Railroad Company*, 36 Minn. 447, 31 N. W. 936 (1887).

Unlawful Expulsion of Student. The Board of Regents of the University of Minnesota is by law exclusively vested with the management of all the educational affairs of the institution, and the courts of the state have no jurisdiction to control its discretion; but, if it refuses to perform any of the duties imposed on it by law, it may be compelled to act by writ of mandamus. Thus when a student in the law school was denied permission to re-register in the law school or in any other department of the university, on the ground that he was deficient in his work, no reason being shown why he should not be allowed to take the work over again, and upon the further ground that he was charged with insubordination toward the faculty, no evidence of guilt being shown, a judgment ordering the university to reinstate the student or show cause why he should not be reinstated was affirmed. *Gleason v. University of Minnesota*, 104 Minn. 359, 116 N. W. 650 (1908).

Eminent Domain. The University of Minnesota is a public institution maintained and conducted by the state in the exercise of its governmental function, and the taking of private property for the purposes of the university is a taking for a public use. Chapter 257, Laws of 1913, authorizing the construction of a railway connecting the university farm with the street-car system of the city of Minneapolis, and with the belt-line railway operated by the Minnesota Transfer Railway Company, is constitutional. *State ex rel. Smith v. Van Reed*, 125 Minn. 194, 145 N. W. 967 (1914).

UNIVERSITY OF NEBRASKA

LINCOLN, NEBRASKA

A state university founded by act of the legislature in 1869. Comprises the Graduate College, the College of Arts and Sciences, the College of Agriculture, the College of Engineering, the College of Law, the Teachers College, the College of Medicine, the College of Pharmacy, the College of Business Administration, the College of Dentistry, the School of Fine Arts, the School of Nursing, the School of Journalism, the Teachers College High School, the Nebraska School of Agriculture at Curtis, the Nebraska Agricultural Experiment Station, Experiment Substations at North Platte, Valentine, and Scottsbluff, Experiment Farm at Alliance, Fruit Farm at Union, Agronomy Farm at Havelock, School of Music, University Hospital, Agricultural Extension Service, University Extension Division, and the Nebraska Engineering Experiment Station. Endowment in 1930, approximately \$952,000. Total annual income about \$4,000,000, of which slightly more than half was from state appropriations. The governing board has no power to disburse the proceeds of mill-taxes or endowment funds in the absence of a legislative appropriation thereof.

LAWS RELATING TO THE UNIVERSITY OF NEBRASKA

CONSTITUTIONAL PROVISIONS

ARTICLE VII¹

SECTION 10. University of Nebraska, Government, Board of Regents, Election. The general government of the University of Nebraska shall, under the direction of the Legislature, be vested in a board of six regents to be styled, The Board of Regents of the University of Nebraska, who shall be elected from and by districts as herein provided. Their term of office shall be for six years each. Their duties and powers shall be prescribed by law; and they shall receive no compensation, but may be reimbursed their actual expenses incurred in the discharge of their duties.

The Legislature shall divide the state, along county lines, into six compact regent districts of approximately equal population, which shall be numbered from one to six, consecutive numbers to be given adjacent districts. Such districts shall correspond, as nearly as may be practicable, in location and numbers with the present six Congressional Districts of the state. Such districts shall not be changed except upon the concurrence of two-thirds of the members of each House of the Legislature, nor shall any such change vacate the office of any regent. Until such districts are established, the six Congressional Districts of the state as now constituted and numbered shall be the districts provided for by this section.

Provided, that the regents elected before the adoption of this Constitution shall serve out their respective terms and that the successors of those whose terms expire in January, 1923, shall be elected from districts numbered three and four respectively at the general election to be held in 1922; of those whose terms expire in 1925, from districts numbered one and two, at the general election to be held in 1924; and of those whose terms expire in 1927, from districts numbered five and six, at the general election to be held in 1926. (Amended, 1920.)

STATUTORY PROVISIONS²

85-101. "The University of Nebraska", Establishment, Name. There has been established and shall be maintained,

¹Constitution of 1875, with amendments to date, *Compiled Statutes of Nebraska*, 1929, p. 52.

²*Compiled Statutes of Nebraska*, 1929, Sections 85101-85111, 85129, 85135, 85141.

in this state an institution under the name and style of "The University of Nebraska." (1869 p. 172; Ann. 11746; Comp. 6127; R. S. 1913, 7081; C. S. 1922, 6713.)

85-102. **Same, Object.** The object of such institution shall be to afford to the inhabitants of this state the means of acquiring a thorough knowledge of the various branches of literature, science and arts. (1869 p. 172; Ann. 11747; Comp. 6128; R. S. 1913, 7082; C. S. 1922, 6714.)

85-103. **Same, General Government, Board of Regents.** The general government of the university shall be vested in a board of six regents elected by the electors of the state at large. Vacancies occurring in the board between one general election and another may be filled by the governor: *Provided*, always, any person thus appointed to fill a vacancy shall hold his office until the next general election succeeding his appointment, and no longer. (1869 p. 172; 1877 p. 56; Ann. 11748; Comp. 6129; R. S. 1913, 7083; C. S. 1922, 6715.)

85-104. **Same, Colleges Embraced.** The University of Nebraska may embrace the following colleges: First. A graduate college. Second. A college of arts and sciences. Third. A college of agriculture. Fourth. A college of engineering. Fifth. A teachers' college. Sixth. A college of law. Seventh. A college of medicine. Eighth. A college of pharmacy. Ninth. A college of dentistry. Tenth. A college of business administration. (1869 p. 172; 1877 p. 56; 1909 p. 499; Ann. 11751; Comp. 6135; R. S. 1913, 7084; 1915 p. 287; 1919 p. 368; C. S. 1922, 6716.)

85-105. **Same, Board of Regents, Powers, General, Body Corporate, Organization, Real and Personal Property, Acquisition, Disposal.** The board of regents shall have full power to appoint their own presiding officer and secretary. They shall constitute a body corporate, to be known as "The board of regents of the University of Nebraska," and as such may sue and be sued, and may make and use a common seal and alter the same at pleasure. They may acquire real and personal property for the use of the university and may dispose of the same whenever the university can be benefited thereby: *Provided*, they shall never dispose of grounds upon which buildings of the university are located without consent of the legislature. (1869 p. 172; 1877 p. 56; Ann. 11749; Comp. 6130; R. S. 1913, 7085; C. S. 1922, 6717.)

85-106. **Same, Board of Regents, Powers, Enumerated, Continued.** The regents shall have power to enact laws for the government of the university; to elect a chancellor, and the prescribed number of professors and tutors and a steward; to prescribe the duties of all the professors and officers, and to fix the compensation. They shall have power to remove the chancellor, and any professor or tutor, when the interests of the

university shall require it. (1875 p. 154; Ann. 11775; Comp. 6152; R. S. 1913, 7086; C. S. 1922, 6718.)

85-107. Board of Regents, Chairs of Instruction, Establishment. The regents shall be empowered to establish in these several colleges such chairs of instruction as may be proper, and so many of them as the funds of the university may allow. They shall also be authorized to require professors to perform duties in more than one of the several colleges whenever they shall deem it wise and proper so to do. (1869 p. 172; 1877 p. 57; Ann. 11752; Comp. 6136; R. S. 1913, 7087; C. S. 1922, 6719.)

85-108. Same, Model Farm, Lands, Restraint of Alienation. The governor having set apart certain land belonging to the state, for the purpose of a model farm as a part of the college of agriculture, such land, so set apart, shall not be disposed of for any other purpose. (1869 p. 175; Ann. 11753; Comp. 6137; R. S. 1913, 7088; C. S. 1922, 6720.)

85-109. Same, Teachers, Employment, Status. The regents shall, when the number of students in any particular branch of study require, elect one or more teachers to give instruction in such branch of study; but such teachers shall not be considered as belonging to the faculty of the college in which they may be employed. (1869 p. 176; Ann. 11755; Comp. 6139; R. S. 1913, 7090; C. S. 1922, 6722.)

85-110. Colleges, Government, Courses of Study, Textbooks. The immediate government of each college shall be by its own faculty, which shall consist of the professors therein, but no course of study shall be adopted or series of textbooks used without the approval of the board of regents. (1869 p. 176; Ann. 11756; Comp. 6140; R. S. 1913, 7091; C. S. 1922, 6723.)

85-111. Degrees, Diplomas, Rewards of Merit, Honorary Degrees. The board of regents shall have exclusive authority to confer degrees and grant diplomas, but each college may, in its discretion, grant rewards of merit to its own students. No student shall upon graduation receive any diploma or degree unless he shall have been recommended for such honor by the faculty of the college in which he shall have pursued his studies. The regents shall also have power to confer the usual honorary degrees upon other persons than graduates of this university in recognition of their learning or devotion to literature, science or art; but no degree shall be conferred in consideration of the payment of money or other valuable thing. (1869 p. 176; Ann. 11757; Comp. 6141; R. S. 1913, 7092; C. S. 1922, 6724.)

85-129. Board of Regents, Meetings Public, Executive Sessions, Public Records Kept, Members, Compens-

sation. All meetings of the board of regents shall be open to the public: *Provided, however,* the board may hold executive sessions when in the judgment of the board the interests of the university require it. Public record shall be made and kept of all meetings and proceedings of the board. The regents shall meet at least twice each year at the administration building. They shall receive for their services no compensation, but they may be reimbursed their actual expenses incurred in the performance of their official duties. (1869 p. 172; 1877 p. 58; 1907 p. 462; Ann. 11767; Comp. 6150; R. S. 1913, 7111; C. S. 1922, 6743.)

85-135. Board of Regents, Condemnation of Lands, Eminent Domain, Power Granted. The regents of the University of Nebraska are hereby given power and authority to acquire by condemnation lands necessary for the university. (1905 p. 606; Ann. 11769; Comp. 6130a; R. S. 1913, 7117; C. S. 1922, 6749.)

85-141. Board of Regents, Rules, Power to Make Granted, Matters of Special Interest to Nebraska, Faculties, Extraneous Services. The board of regents of the University of Nebraska shall make, from time to time, such rules and regulations as it deems wise governing the duties of members of the several faculties of the university in respect to scientific, economic or other problems of general or special interest to the people of the state. [The regents are further empowered to designate one of the teaching staff of the university to act as state geologist and one to act as state entomologist]: *Provided, however,* such extraneous services shall not be permitted to interfere with the prime duties of members of the faculties as teachers and investigators in their respective departments. All moneys which may be appropriated by the legislature for any purpose involving the cooperation of the university staffs of instruction or experimentation shall be administered and expended under the direction and control of the board of regents in the manner now provided by law for expenditure of university funds generally. (1911 p. 448; Ann. 11780; Comp. 6134a; R. S. 1913, 7123; C. S. 1922, 6755.)

JUDICIAL DECISIONS

State Control of University Funds. The university corporation is but part of the machinery employed in carrying on the affairs of state, and is subject to be changed, modified, restrained or destroyed, as the general interests and public exigencies may require, without infringing private rights. The

Laws of Nebraska of 1875, page 154, abolished the office of treasurer of the university and made the state treasurer custodian of all university funds. The university corporation acts simply by delegated authority, and can exercise only such powers as are expressly given to it; and not having corporate power over the university funds, it has no authority to bring and maintain an action to recover such funds. *Regents v. McConnell*, 5 Neb. 423 (1877).

Custody and Disbursement of University Funds. By page 154 of the Laws of Nebraska of 1875, directing that all moneys belonging to the university fund shall be paid over to the state treasurer, such moneys are transferred to the state treasury, and warrants for university expenses are to be drawn on the state treasurer and paid out of the general appropriation for university expenses. *State v. Liedtke*, 9 Neb. 468, 4 N. W. 61 (1880).

The Regents of the Nebraska State University, in the absence of an appropriation by the Legislature, have no power to dispose of the endowment fund, nor funds derived from the three-eighths mill tax. *State v. Babcock*, 17 Neb. 610, 24 N. W. 202 (1885).

The secretary of the Board of Regents of the State University had no authority to draw any money appropriated for the university or any of its buildings, except upon the vouchers duly certified, as specified in section 2 of the act of April 6, 1891. *State v. Moore*, 36 Neb. 579, 54 N. W. 866 (1893).

Chapter 65 of the Laws of Nebraska of 1895, providing for a uniform system of vouchers for all disbursements of the state's funds, applies to claims against the state university. *State v. Moore*, 46 Neb. 373, 64 N. W. 975 (1895).

Payment of Professor. Professors in the University of Nebraska are employees of the state, and not merely employees of an independent educational corporation. Hence a professor may maintain a suit for a writ of mandamus to compel the Board of Regents to issue him a certificate for services performed, upon which the Auditor of Public Accounts can draw a warrant as prescribed in section 25, chapter 87 of the Compiled Statutes of Nebraska of 1901. *Von Forel v. State ex rel. Ansley*, 96 N. W. 648, 4 Neb. (Unof.) 843 (1903).

Disbursement of Federal Funds. Although funds raised by state taxation for university purposes can not be expended without specific legislative appropriation thereof, the funds which the university derives from the federal government can be disbursed without further legislative appropriation. Hence a writ of mandamus was issued to compel the Auditor to draw a warrant for the payment of an item of indebtedness out of these funds, when he declined to issue a warrant on the sole ground that the Legislature had not specifically appropriated the fund in question for that purpose. *State ex rel. Spencer Lens Co. v. Searle*, 109 N. W. 770, 77 Neb. 155 (1906).

Mill Tax Continued. Section 19 of chapter 87 of the Nebraska Compiled Statutes of 1905, providing that in the year 1899 and annually thereafter a tax of one mill on the dollar should be levied on all taxable property in the state for the maintenance of the university, was not repealed by implication by the General Revenue Law of 1903, which authorized a five mill tax, if necessary, for the state general fund, and one and a half mills for the common school fund. *State v. Searle*, 112 N. W. 380, 79 Neb. 111 (1907).

Legislative Control: Establishment of Experiment Station. In granting a writ of mandamus to compel the regents of the university to establish an Agricultural Experiment Station west of the one hundredth meridian as directed by chapters 143 and 144 of the Laws of Nebraska of 1909, the court said: "The subject of education has been delegated by the people to the Legislature. In the exercise of a lawful discretion, which we have neither authority nor desire to curb, the Legislature . . . has said that the experimental stations are necessary to the welfare, and shall become a component part, of the College of Agriculture in the University of Nebraska. The Board of Regents is but a mere governmental agency expressly subjected by the constitution to the will of the Legislature to work out its projects for higher education." *State ex rel. Bushee v. Whitmore*, 85 Neb. 566, 123 N. W. 1051 (1909).

Provisions Regarding Biennial Appropriations: Not Applicable to Federal Funds. Section 19 of article 3 of the Constitution of Nebraska provides that appropriations can not be made for a period beyond the expiration of the first fiscal

quarter after the adjournment of the next regular session of the legislature. It is not essential that the money be actually drawn during the two-year period, but the expense must have been incurred during the two years for which the appropriation was made. It is the unexpended surplus of the amount appropriated that lapses, not the uncollected portion of an appropriation. An appropriation of "the proceeds of the one mill tax for the years 1907 and 1908" is an appropriation of the whole amount of the tax, and not of that portion only which was actually collected during the biennium. The provisions requiring biennial appropriations are not applicable to funds received by the state from Congress, and specifically devoted by Congress to university purposes. *State ex rel. Ledwith v. Brian, Treasurer*, 84 Neb. 30, 120 N. W. 916 (1909).

Constitutionality of Municipal Tax for State University. A municipal tax for the purpose of donating the revenue therefrom to the state for the university, to induce the state to continue the location of the institution in the city rather than remove it to another location, is constitutional under article 9, section 6 of the Constitution of Nebraska, permitting legislative authorization of municipalities to collect taxes for "all corporate purposes." The court observed that the continuance of the university within the city was thought to be beneficial to the city at large, and whether such location would have the desired effect was a question determinable by the reasonable discretion of the city authorities. *Sinclair v. Lincoln*, 101 Neb. 163, 162 N. W. 488, L.R.A. 1917E 842 (1917).

Eminent Domain. Condemnation proceedings for the purpose of extending the campus of the University of Nebraska were authorized by section 7118, Revised Statutes of Nebraska, 1913. Under this statute the measure of recovery is held to be the value of the land taken, plus damages to the remainder of the tract not actually appropriated. Hence the plaintiff, whose home was condemned, was not allowed to recover damages for loss of time from his regular employment occasioned by the necessity of procuring another house and moving his household goods, nor for the expense and inconvenience of moving. *Mohler v. Board of Regents of University of Nebraska*, 102 Neb. 12, 165 N. W. 954 (1917).

Legislative Control: Establishment of Hog Cholera Serum Plant. The Nebraska Constitution of 1875 adopted the University of Nebraska as a state institution, and confirmed the provisions of section 2, page 172 of the Laws of 1869, declaring its purpose to be "to afford to the inhabitants of this state the means of acquiring a thorough knowledge of the various branches of literature, science, and the arts." It vested its general government in a Board of Regents under the direction of the Legislature, and did not prohibit the latter from imposing new and additional duties on the regents or from requiring them to establish and conduct a plant for the manufacture and distribution of hog cholera serum. *Fisher v. Board of Regents of University of Nebraska*, 189 N. W. 161, 108 Neb. 666 (1922).

Control of State Schools for Deaf and Blind. An amendment to the Constitution of Nebraska, designed to transfer the control of the School for the Deaf at Omaha and the School for the Blind at Nebraska City from the State Board of Control to the Regents of the University of Nebraska was proposed by the legislature of 1927 (Laws 1927, chapter 48) and submitted to the voters of the state and received a majority of the votes cast. However, the amendment was held invalid and never became a part of the Constitution for lack of substantial compliance with Article XVI, section 1, of the Constitution, which provides that amendments proposed by joint resolution shall "be published once each week for four weeks in at least one newspaper in each county where a newspaper is published, immediately preceding the next election, . . ." Hence, a writ of mandamus to compel the Board of Regents to assume control of the two schools was denied. *State ex rel. Hall v. Cline et al.*, 118 Neb. 150, 224 N. W. 6 (1929).

Appropriation in Excess of Governor's Recommendation. Section 7 of article 4 of the Constitution of Nebraska provides that appropriation bills containing items in excess of the amount recommended in the Governor's budget message, shall not become law unless adopted by a three-fifths vote of each house of the Legislature. Such excess so approved by three-fifths vote is not subject to veto by the Governor. Accordingly the regents of the state university were granted

equitable relief on the ground of inadequate legal remedy, when the State Auditor certified the appropriation for the university as reduced by the Governor's veto after the items disapproved by the Governor had passed the Legislature by three-fifths vote. *Elmen v. State Board of Equalization and Assessment*, 120 Neb. 141, 231 N. W. 772 (1930).

NORTHWESTERN UNIVERSITY

EVANSTON, ILLINOIS

A privately controlled, co-educational university, founded in 1851. A majority of the members of the governing board must be members of the Methodist Episcopal Church. The College of Liberal Arts, the College of Education, and the Schools of Music, Speech, Engineering, Graduate School of Arts and Sciences, and certain departments of the School of Commerce and of the Medill School of Journalism are on the campus in Evanston. The Schools of Medicine, Law, and Dentistry, and other departments of the School of Commerce and Medill School of Journalism are on the Alexander McKinlock Memorial Campus in Chicago. Endowment and trust funds in 1930 exceeded \$25,420,000. Gift and trust funds were nearly \$6,000,000. Total annual expenditure for educational purposes exceeded \$4,800,000. The university enjoys complete exemption from taxation of all its property, in accordance with an irrevocable provision of its charter.

CHARTER

AN ACT TO INCORPORATE THE NORTHWESTERN UNIVERSITY¹

SECTION I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That Richard Haney, Philo Judson, S. P. Keys, and A. E. Phelps, and such persons as shall be appointed by the Rock River Annual Conference of the Methodist Episcopal Church to succeed them in said office; Henry Summers, Elihu Springer, David Brooks, and Elmore Yocum, and such persons as shall be appointed by the Wisconsin Annual Conference of said church to succeed them; four individuals, if chosen, and such persons as shall be appointed to succeed them by the Michigan Annual Conference of said church; four individuals, if chosen, and such persons as shall be appointed to succeed them by the North Indiana Annual Conference of said church; H. W. Reed, I. I. Steward, D. N. Smith, and George M. Geas, and such persons as shall be appointed to succeed them by the Iowa Annual Conference of said church; four individuals, if chosen, and such persons as shall be appointed to succeed them by the Illinois Annual Conference of said church; A. S. Sherman, Grant Goodrich, Andrew J. Brown, John Evans, Orrington Lunt, J. K. Botsford, Joseph Kitterstring, George F. Foster, Eri Reynolds, John M. Arnold, Absalom Funk, and E. B. Kingsley, and such persons, citizens of Chicago or its vicinity, as shall be appointed by the Board of Trustees hereby constituted to succeed them, be, and they are hereby, created and constituted a body politic and corporate, under the name and style of the *Trustees of the Northwestern University*,² and henceforth shall be styled and known by that name, and by that name and style to remain and have perpetual succession, with power to sue and be sued, plead and be impleaded, to acquire, hold and convey property, real, personal, or mixed, in all lawful ways, to have and use a common seal, and to alter the same at pleasure, to make and alter from time to time such by-laws as they

¹*The Charter and Its Amendments.* Northwestern University Bulletin, Vol. XXVI, No. 7. pp. 4-9. Evanston, Illinois: Northwestern University, 1925.

²*Ibid.* pp. 10-11. Amended by act approved February 14, 1855 to include four board members chosen by the Northwestern Indiana Conference.

Ibid. p. 14. Further amended by act approved February 23, 1867 providing (Section II) that: "In addition to the number of Trustees heretofore provided for by law, the Board may elect any number, not exceeding twenty-four, and without reference to their several places of residence; and a majority of the whole Board shall be members of the Methodist Episcopal Church."

may deem necessary for the government of said institution, its officers and servants, provided such by-laws are not inconsistent with the constitution and laws of this State and of the United States, and to confer on such persons as may be considered worthy of such academical or honorary degrees as are usually conferred by similar institutions.³

SECTION II. The term of office of said Trustees shall be four years, but that of one member of the Board for each conference enjoying the appointing power by this act, and [the] term of three of the members whose successors are to be appointed by the Board hereby constituted, shall expire annually, the term of each member of the Board herein named to be fixed by lot at the first meeting of said Board, which Board shall, in manner above specified, have perpetual succession, and shall hold the property of said institution solely for the purposes of education, and not as a stock for the individual benefit of themselves or any contributor to the endowment of the same; and no particular religious faith shall be required of those who become students of the institution. Nine members shall constitute a quorum for the transaction of any business of the Board, except the appointment of President or Professor, or the establishment of chairs in said institution, and the enactment of by-laws for its government, for which the presence of a majority of the Board shall be necessary.⁴

SECTION III. Said annual conferences of the Methodist Episcopal Church, under whose control and patronage said university is placed, shall each also have the right to appoint annually two suitable persons, members of their own body, visitors to said university, who shall attend the examination of students, and be entitled to participate in the deliberations of the Board of Trustees and enjoy all the privileges of members of said board except the right to vote.⁵

SECTION IV. Said institution shall remain located in or near the City of Chicago, Cook County, and the corporators and their successors shall be competent in law or equity to take to themselves, in their said corporate name, real, personal, or mixed estate, by gift, grant, bargain and sale, conveyance, will, devise or bequest of any person or persons whomsoever and the

³*Ibid.* p. 13. Amending act of 1861 further provided (Section III) that: "Any chartered institution of learning may become a department of this University by agreement between the Board of Trustees of the two institutions."

⁴*Ibid.* p. 14. Amended by act of 1867 providing (Section II) that: "No greater number shall be required to constitute a quorum than has been heretofore required by law; *Provided*, that in all called meetings of the Board, the object of the meeting shall be particularly specified in the notice to be previously given to each Trustee."

⁵*Ibid.* p. 12. Further amended by act approved February 16, 1861 providing that the respective church conferences hereafter elect only two trustees each "who shall be and perform the duties of the visitors to said institution."

same estate, whether real, personal, or mixed, to grant, bargain, sell, convey, devise, let, place out at interest, or otherwise dispose of the same for the use of said institution in such manner as to them shall seem most beneficial to said institution. Said corporation shall faithfully apply all the funds collected or the proceeds of the property belonging to the said institution, according to their best judgment, in erecting and completing suitable buildings, supporting necessary officers, instructors, and servants, and procuring books, maps, charts, globes, and philosophical, chemical, and other apparatus necessary to the success of the institution, and do all other acts usually performed by similar institutions, that may be deemed necessary or useful to the success of said institution, under the restrictions herein imposed: Provided, nevertheless, that in case any donation, devise, or bequest shall be made for particular purposes accordant with the design of the institution, and the corporation shall accept the same, every such donation, devise, or bequest shall be applied in conformity with the express conditions of the donor or devisor: Provided further, that said corporation shall not be allowed to hold more than two thousand acres of land at any one time unless the said corporation shall have received the same by gift, grant, or devise; and in such case they shall be required to sell or dispose of the same within ten years from the time they shall acquire such title; and by failure to do so, such land over and above the beforenamed two thousand acres, shall revert to the original donor, grantor, devisor, or their heirs.⁶

SECTION V. The treasurer of the institution and all other agents when required, before entering upon the duties of their appointment, shall give bond for the security of the corporation in such penal sums, and with such securities as the corporation shall approve, and all process against the corporation shall be by summons, and the service of the same shall be by leaving an attested copy thereof with the treasurer at least sixty days before the return day thereof.

SECTION VI. The corporation shall have power to employ and appoint a President or Principal for said institution, and all such professors or teachers, and all such servants as may be necessary, and shall have power to displace any or such of them, as the interest of the institution may require, to fill vacancies which may happen, by death, resignation, or otherwise,

⁶*Ibid.* p. 11. Amended by act approved February 14, 1855, as follows:

"Section III. The said corporation shall have power to take, hold, use and manage, lease and dispose of all such property, as may in any manner come to said corporation charged with any trust or trusts, in conformity with trusts and direction, and so execute all such trusts as may be confided to it.

"Section IV. That all property of whatever kind or description, belonging to or owned by said corporation, shall be forever free from taxation for any and all purposes."

among said officers and servants, and to prescribe and direct the course of studies to be pursued in said institution.

SECTION VII. The corporation shall have power to establish departments for the study of any and all the learned and liberal professions in the same; to confer the degree of doctor in the learned arts and sciences and *belles-lettres*, and to confer such other academical degrees as are usually conferred by the most learned institutions.

SECTION VIII. Said corporation shall have power to institute a board of competent persons, always including the faculty, who shall examine such individuals as may apply, and if such applicants are found to possess such knowledge pursued in said institution, as in the judgment of said board renders them worthy, they may be considered graduates in course, and shall be entitled to diplomas accordingly on paying such fee as the corporation shall affix, which fee, however, shall in no case exceed the tuition bills of the full course of studies in said institution; said examination board may not exceed the number of ten, three of whom may transact business, provided one be of the faculty.

SECTION IX. Should the corporation at any time act contrary to the provisions of this charter, or fail to comply with the same, upon complaint being made to the Circuit Court of Cook County, a *scire facias* shall issue, and the circuit attorney shall prosecute in behalf of the People of this State for forfeiture of this charter.

This act shall be a public act, and shall be construed liberally in all courts, for the purposes herein expressed.⁷

SYDNEY BREESE

Speaker of the House of Representatives

WILLIAM McMURTEY

Speaker of the Senate

Approved January 28, 1851

A. C. FRENCH

Attest: a true copy, March 22, 1851

DAVID L. GREGG

Secretary of State

⁷*Ibid.* p. 10. The amending act of 1855 further provided (Section II) that: "No spiritous, vinous, or fermented liquors shall be sold under license, or otherwise, within four miles of the location of said University, except for medicinal, mechanical, or sacramental purposes, under a penalty of twenty-five dollars for each offense, to be recovered before any Justice of the Peace of said County in an action of debt in the name of the County of Cook: Provided, that so much of this act as relates to the sale of intoxicating drinks within four miles, may be repealed by the General Assembly whenever they may think proper."

JUDICIAL DECISIONS

Tax Exemption. The General Assembly could not, under the Illinois Constitution of 1848, exempt from taxation property owned by educational, religious, or charitable corporations, which was not itself used directly in aid of the purposes for which the corporations were created, but which was held for profit merely, although the profits were to be devoted to the proper purposes of the corporations; and to that extent the fourth section of the amendment to the charter of Northwestern University, approved February 14, 1855, was void and of no effect. *Northwestern University v. People ex rel. Miller*, 80 Ill. 333 (1875).

Whether the act of February 14, 1855, was void by reason of conflict with the state constitution under which it was made is a question reviewable by United States courts. Property of the university, the annual profits of which are devoted to the objects of the institution as a school, could, under the Constitution of 1848, be exempted from taxation by the Legislature; and a legislative act of 1872, conforming taxation to the new Constitution of 1870, and limiting the tax exemption to land and other property in immediate use by the school, impaired the obligation of the contract of exemption found in the act of 1855, and was therefore void. *Northwestern University v. Illinois*, 99 U.S. 309, 25 L. Ed. 387 (1879).

Under section 4 of the Act of 1855, amending the charter of Northwestern University, "all property, of whatever kind or description, belonging to or owned by" the university, is exempt from taxation, and the provision applies to property acquired prior to the enactment of the amendment as well as that acquired subsequently. The constitutionality of the act having been upheld by the United States Supreme Court, the question can not be re-litigated in a subsequent suit between the same parties by assigning new reasons for holding the act invalid which existed when the decision was rendered. *In re Assessment of Northwestern University*, 206 Ill. 64, 69 N. E. 75 (1903).

Liability for Injury to Student. Northwestern University, being a corporation organized under a private charter solely for educational purposes, to which all its funds must be applied, is a

charitable institution within the rule exempting such institutions from liability for the negligent acts of their servants; and the fact that tuition fees are charged is immaterial. Thus a student who received injuries resulting in the loss of an eye through the alleged negligence of a professor of dentistry in the laboratory was not allowed to recover damages from the university. *Parks v. Northwestern University*, 218 Ill. 381, 75 N. E. 991, 2 L.R.A.N.S. 556, 4 Ann. Cas. 103 (1905).

Gift to Wesley Memorial Hospital. Northwestern University made a gift to the Wesley Memorial Hospital, without any condition of reverter, but with the provision that the staff of the hospital should be drawn from the faculty of the University Medical School. At the petition of the university a court of equity intervened to enforce this obligation, holding that the provision was mandatory and not optional, and that it meant the entire hospital staff. *Northwestern University v. Wesley Memorial Hospital*, 290 Ill. 205, 125 N. E. 13 (1919).

UNIVERSITY OF
NOTRE DAME DU LAC
NOTRE DAME, INDIANA

A privately controlled university for men, owned and conducted by the Congregation of Holy Cross, a religious community of the Roman Catholic Church. The faculty is not exclusively Catholic, and students of all creeds are enrolled. Founded in 1842, and chartered by the Legislature of Indiana in 1844. Here the first permanent department of law at an American Catholic university was opened in 1869. The university now consists of the Graduate School, the College of Arts and Letters, the College of Science, the College of Law, the College of Engineering, and the College of Commerce. The general endowment fund in 1930 was \$1,000,000. Annual receipts from sources other than income from endowment were more than \$1,400,000. The university is governed by a board made up of *ex officio* and elected officers from the Congregation of Holy Cross, assisted by an associate board of lay trustees, composed of alumni members and members at large, which holds, invests and administers the endowment funds.

CHARTER OF THE UNIVERSITY OF NOTRE DAME DU LAC¹

AN ACT TO INCORPORATE THE UNIVERSITY OF NOTRE DAME DU LAC AT SOUTH BEND IN ST. JOSEPH COUNTY, INDIANA

(Approved January 15, 1844)

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That Edward Frederick Sorin, Francis Lewis Cointet, Theophilus Jerome Marivault, Francis Gouesse, and their associates and successors in office, be, and are hereby constituted and declared to be a body corporate and politic by the name and style of "The University of Notre Dame du Lac," and by that name they shall have perpetual succession, with full power and authority to confer and grant, or cause to be conferred and granted, such decrees and diplomas in the liberal arts and sciences, and in law and Medicine, as are usually conferred and granted in other universities in the United States: Provided, however, that no degrees shall be conferred or diplomas granted, except to students who have acquired the same proficiency in the liberal arts and sciences, and in law and medicine, as is customary in other universities in the United States; to elect a president and all such other officers, professors, instructors, and agents, as they may think necessary for the benefit of said university; to contract and be contracted with; to acquire, hold, enjoy, and transfer property, real or personal, in their corporate capacity; to make, have, and use a common seal, and the same to alter at pleasure; to sue and be sued, to plead and be impleaded, in any court of law or equity; to receive and accept of any grant, gift, donation, bequest, or conveyance, by any person, company, or corporation, of any property, real or personal, and to hold, and enjoy, and dispose of the same, as may by them be deemed best for the interest of said institution; to make, ordain, establish, and execute such by-laws, rules, and ordinances, not inconsistent with the constitution and laws of the United States or of this State, as they shall deem necessary for the welfare of said university; and to do all other acts in pursuance thereof necessary for the promotion of the arts and sciences and the prosperity of said university: Provided, it shall not be lawful for said corporation to hold or be the owner of real estate, exclusive of improvements, exceed-

¹From copy supplied by the President, Rev. Charles L. O'Donnell, C. S. C., Ph. D.

ing in value thirty thousand dollars; and if by donation, devise, or otherwise, it should become the legal or equitable owner of real estate of greater value, the same shall be sold by said corporation within two years after such title shall have accrued or become vested therein.

SECTION 2. The legislature reserves to itself the right to revise, amend, or repeal the provisions of this act of incorporation at any time after two years and a half shall have elapsed: Provided, that a repeal of said act shall not operate so as to divest the owners thereof of any property acquired under said act.

SECTION 3. This act is declared to be a public act, and the same shall be construed favorably for every beneficial purpose therein intended.

This act to be in force from and after its publication in the South Bend Free Press at the expense of said corporation.

AN ACT TO AMEND AN ACT TO INCORPORATE THE UNIVERSITY OF NOTRE DAME DU LAC AT SOUTH BEND, IN ST. JOSEPH COUNTY, INDIANA.

(Approved January 13, 1845)

SECTION 1. *Be it enacted by the General Assembly of the state of Indiana*, That the second section of the act to which this is an amendment, be so construed as that the legislature shall never have the power to impair the fundamental principles of the incorporation by any act repealing said act of incorporation.

SECTION 2. This act shall be in force from and after its passage.

AN ACT TO AMEND THE FIRST SECTION OF AN ACT ENTITLED "AN ACT TO INCORPORATE THE UNIVERSITY OF NOTRE DAME DU LAC AT SOUTH BEND, ST. JOSEPH COUNTY, INDIANA." APPROVED JANUARY 15, 1844.

(Approved March 8, 1873)

SECTION 1. *Be it enacted by the General Assembly of the state of Indiana*, That section one of the act entitled "An Act to incorporate the University of Notre Dame Du Lac, at South Bend, St. Joseph County, Indiana," approved January 15, 1844, and which reads as follows, to wit:

That Edward Frederick Sorin, Francis Lewis Cointet, Theophilus Jerome Marivault, Francis Gousse and their associates and successors in office be, and are hereby, constituted and declared to be a body corporate and politic, by the name and style of the University of Notre Dame Du Lac and by that name they shall have perpetual succession with full power and authority to confer and grant, or cause to be conferred and

granted, such degrees and diplomas in the liberal arts and sciences and in law and medicine as are usually conferred and granted in other universities in the United States; Provided, however, that no degrees shall be conferred or diplomas granted except to students who have acquired the same proficiency in the liberal arts and sciences, and in law and medicine, as is customary in other universities in the United States; to elect a president and all such officers, professors, instructors and agents as they may think necessary for the benefit of said university; to contract and be contracted with; to acquire, hold, enjoy, and transfer property, real or personal, in their corporate capacity, to make, have and use a common seal, and the same to alter at pleasure; to sue and be sued, to plead and to be impleaded in any court of law or equity; to receive and accept of any grant, gift, donation, bequest or conveyance by any person, company or corporation, of any property, real or personal, and to hold, enjoy and dispose of the same as may by them be deemed best for the interest of said institution; to make, ordain, establish and execute such by-laws, rules and ordinances, not inconsistent with the constitution and laws of the United States, or of this State, as they shall deem necessary for the welfare of said university; and to do all other acts in pursuance thereof necessary for the promotion of the arts and sciences and the prosperity of said university; Provided, It shall not be lawful for said corporation to hold or be the owner of real estate, exclusive of improvements, exceeding in value thirty thousand dollars (\$30,000); and if by donation, devise, or otherwise it should become the legal or equitable owner of real estate of greater value the same shall be sold by said corporation within two years after title shall have accrued or become vested therein, shall be amended so as to read as follows, to wit:

SECTION 1. That Edward Frederick Sorin, Francis Lewis Cointet, Theophilus Jerome Morivault, Francis Guesse, and their associates and successors in office, be and are hereby constituted and declared to be corporate and politic, by the name and style of the University of Notre Dame Du Lac, and by that name they shall have perpetual succession, with full power and authority to confer and grant, or cause to be conferred and granted, such degrees and diplomas in the liberal arts and sciences, and in law and medicine, as are usually conferred and granted in other universities in the United States; Provided, however, that no degrees shall be conferred or diplomas granted except to students who have acquired the same proficiency in the liberal arts and sciences, and in law and medicine, as is customary in other universities in the United States; to elect a president and all such other officers, professors, instructors, and agents as they may think necessary for the benefit of said

university; to contract and be contracted with; to acquire, hold, enjoy and transfer property, real or personal, in their corporate capacity; to make, have and use a common seal, and the same to alter at pleasure; to sue and be sued, to plead and be impleaded in any court of law or equity; to receive and accept of any grants, gifts, donations, bequests or conveyance by any person, company, or corporation, of any property, real or personal, and to hold, and convey and dispose of the same as may by them be deemed best for the interest of said institution; to make, ordain, establish and execute such by-laws, rules and ordinances not inconsistent with the Constitution and laws of the United States, or of this State, as they shall deem necessary for the welfare of said university, and to do all other acts in pursuance thereof necessary for the promotion of the arts and sciences, and the property of said university; Provided, it shall not be lawful for said corporation to hold or be the owner of real estate, exclusive of improvements, exceeding in value three hundred thousand dollars, and if by donation, devise, or otherwise it shall become the legal or equitable owner of real estate of greater value, the same shall be sold by said corporation within two years after such title shall have accrued or become vested therein.

SECTION 21. It is hereby declared that an emergency exists for the immediate taking effect of this act, and the same shall be in force from and after its passage.

FORMAL WITHDRAWAL FROM CONTROL OF ST. MARY'S ACADEMY

State of Indiana, }
County of St. Joseph } ss

Come now the Corporation and Trustees of the University of Notre Dame du Lac, situated and being at Notre Dame, in the County and State aforesaid to-wit: Very Rev. Edward Sorin, C.S.C., Rev. Alexis Granger, C.S.C., Rev. Thomas E. Walsh, C.S.C., Very Rev. William Corby, C.S.C., Rev. John A. John, C.S.C., and Bro. Edward, C.S.C., at a meeting duly announced and called for the purpose of considering, discussing and acting upon the question of withdrawing formally and legally from all connection with and participation in the supervision, control and direction of or patronage over, St. Mary's Academy, (which Institution is situated at Notre Dame, County and State aforesaid,) whether by this Corporation, its Board of Trustees, or any members of the same, or otherwise, by virtue of the Articles of Association of the said St. Mary's Academy, adopted October 13th, 1862, under the provisions of

an act of the General Assembly of the State of Indiana, entitled an Act for the incorporation of High Schools, Academies, Colleges, Universities, Theological Institutions and Missionary Boards, approved February 28th, 1855, or more particularly the 8th and 9th of the said Articles which provide and are as follows:

"ARTICLE 8th:—The Association, believing that the usefulness and efficiency of the Institution would be greatly promoted by putting the same under the control and patronage of a religious body, and members of the Roman Catholic Church having originated the enterprise, and being desirous of giving it the fostering care of that Christian organization, and especially that branch or order of the Church holding control of the University of Notre Dame du Lac, it is therefore agreed by the members of this Association and by all who may hereafter become such, that, in consideration of the patronage of the Church aforesaid, and especially of said University four members of the Board of Trustees of this Institution shall be elected from the members comprising the Corporation of said University, and that said University shall have the right by a committee of two or more of its body to visit the Academy at such times as it may appoint.

"ARTICLE 9th:—In case of a vacancy in the Board of Trustees by death, resignation, removal out of the State, or failure to attend the meetings of the Board, the remaining Trustees shall fill up the vacancies, but in so doing they are to select from the members of the University aforesaid so as to give the members of that Institution the majority in said Board and upon such remaining Trustees failing to fill such vacancies the Board of Trustees of said University, by a resolution of its Board, may fill such vacancies. The Whole number of Trustees of this Institution shall be seven."

The said Corporation and Trustees of the University of Notre Dame du Lac, in meeting assembled, as aforesaid, having fully considered and discussed the Articles of Association of the said St. Mary's Academy, and particularly those copied above, and believing that the usefulness and efficiency of the said Institution no longer demand or require the supervision control and patronage of the religious body controlling and conducting this University, and being persuaded that the best interests of both Institutions can be subserved by a complete separation and termination of the relations that have existed between them by virtue of the foregoing articles, and every other article that may be construed to bear upon the same subjects, to-wit, the patronage of this University; the election of four members of this Corporation as members of the Board of Trustees of the said Academy, so as to constitute a majority thereof; the right to visit the said Institution at appointed times, or to control,

or have supervision over it in any way, and the power to fill vacancies on the Board of Trustees of the said Academy; now, therefore, we the Corporation and Trustees of the University of Notre Dame du Lac, hereby unanimously agree and declare that the relations which have existed between this University and the said Academy by virtue of the articles aforesaid are severed and at an end, Hereby we and each of us for ourselves and our successors, surrender, yield up, relinquish, and return all power, authority, control, supervision and privileges over St. Mary's Academy, or concerning or relating to it in any manner, conferred upon or granted and given to this Corporation or its Board of Trustees by the said Articles of Association or any of them.

In witness whereof we have hereunto set our hands and seals and caused the seal of the University to be affixed this 19th day of August, 1889.

	EDWARD SORIN	<i>President</i>
	ALEXIS GRANGER, C.S.C.	<i>V. P.</i>
	WM. CORBY,	C.S.C.
(SEAL)	T. E. WALSH,	C.S.C.
	BRO. EDWARD,	C.S.C.
	J. A. ZAHM,	C.S.C. <i>Sec'y</i>

State of Indiana, St. Joseph County SS.

I, B. Edward, a Notary Public in and for the County of St. Joseph and State of Indiana hereby certify that I have examined and compared the foregoing with the original resolution adopted by the Corporation and Trustees of the University of Notre Dame du Lac on the 19th day of August A. D. 1889 wherein they relinquish and surrender all powers rights and privileges conferred upon them by the articles of Association of St. Mary's Academy and find it to be a true full and complete copy of the same.

Witness my hand and Notarial seal this 19th day of August A. D. 1889.

(SEAL) B. EDWARD *Notary Public*

State of Indiana, }
County of St. Joseph } ss

I, B. Edward, a Notary Public for said County and State, do hereby certify that Edward Sorin, President, Alexis Granger, Wm. Corby, T. E. Walsh and J. A. Zahm, Sec'y. personally known to me, duly appeared and verified the foregoing instru-

ment, acknowledged their signatures to the same, and declared it to be their free and voluntary act for the uses and purposes therein mentioned.

Witness my hand and notarial seal this 19th of August, 1889.

(Seal)

B. EDWARD
Notary Public

Filed November 8, 1889

CHARLES F. GRIFFIN
Secretary of State.

OBERLIN COLLEGE

OBERLIN, OHIO

A privately controlled, non-denominational, co-educational college. Chartered as the Oberlin Collegiate Institute in 1834. Name changed to Oberlin College in 1850. The college consists of three major divisions: the College of Arts and Sciences, the Graduate School of Theology, and the Conservatory of Music. Endowment in 1932 was \$17,116,000. Annual income from all sources for 1931-1932 was \$1,463,000.

CHARTER OF OBERLIN COLLEGIATE INSTITUTE¹

AN ACT to incorporate the Oberlin Collegiate Institute

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That Henry Brown, John Keys, Eliphalet Redington, Joel Talcott, Addison Tracy, Jabez L. Burrell, Philip P. Stewart,² Peter P. Pease, and John J. Shepherd, of the county of Lorain, and their associates and successors, be, and they are hereby created a body politic and corporate, to be styled the Board of Trustees of the Oberlin Collegiate Institute, and, by that name, to remain in perpetual succession, with full power to sue and be sued, to plead and be impleaded, to acquire, hold and convey property, real and personal, to have and use a common seal, to alter and renew the same at pleasure; to make and alter, from time to time, such by laws as they may deem necessary for the government of said institution, its officers, students and servants: Provided, such by laws shall not be inconsistent with the constitution and laws of the United States and of this State: also, to have power to confer on those whom they may deem worthy, such honors and degrees as are usually conferred in similar institutions.

SECTION 2. That the said institution shall remain where it is now located in Russia, Lorain county, and shall afford instruction in the liberal arts and sciences; and the trustees may, as they shall find themselves able, and the public good shall require, erect additional departments for such other branches of education as they may think necessary or useful.

SECTION 3. That the board of trustees shall, from time to time appoint a president and other officers and instructors, and also agents of the institution as may be necessary; and shall have power to displace and remove any or either of them for good and sufficient reasons; and also to increase the number of their board to twelve, exclusive of the president, fill vacancies which may occur by resignation, death or otherwise in said board or among said officers or agents, and prescribe and direct the course of study to be pursued in said institute and its departments.

SECTION 4. The president of the institution shall be *ex officio* a member of the board of trustees, and president of the same, and in his absence the board shall elect one of its members to preside for the time being, and if any of said trustees shall be

¹*Laws of Ohio*, 1833-34, pp. 226-27.

²Name printed in original article of incorporation as Philip P. Stewart; it should have been Philo P. Stewart. (Footnote in pamphlet entitled, *Charter and By-Laws of Oberlin College*, p. 3).

permanently appointed president of said institution, his office as trustee shall be deemed vacant, and the board of trustees shall fill the same.

SECTION 5. Any seven of the twelve members of the board of trustees shall constitute a quorum to do business; and the board shall hold their first annual meeting on the second Monday of March, eighteen hundred and thirty-four, at Oberlin, in the township of Russia, in Lorain county, and afterwards they shall meet on their own appointment; but in cases of necessity, the president, with the advice of two trustees, may call a special meeting of the board, or any five members of the board may call such meeting by giving notice to each member at least seven days before the time of said meeting.

SECTION 6. The board of trustees shall faithfully apply all funds by them collected and received according to their best judgment, in erecting suitable buildings, supporting the necessary officers, instructors and agents, and in procuring books, maps, charts, and other apparatus necessary to the well being and success of the institution: Provided, nevertheless, that in case any donations or bequests shall be made for particular purposes not inconsistent with the designs of this institution, and the trustees shall accept and receive the same, every such donation or bequest shall be applied in conformity to the conditions or designs of the donor.

SECTION 7. The treasurer of the institution shall always, and all other agents when required, before entering on the duties of their appointments, give bonds for the security of the corporation and the public in such penal sums, and with such securities as the board of trustees shall approve; and all process against the corporation shall be by summons, and the service of the same shall be by leaving an attested copy thereof with the treasurer of the institution at least ten days before the return thereof.

SECTION 8. The Legislature shall have a right to amend or repeal this act when they deem it necessary: Provided, that no fund or property belonging to the said institution shall ever be by law appropriated to any other purpose than those named in this charter.

February 28, 1834.

AN ACT TO AMEND THE ACT ENTITLED "AN ACT TO INCORPORATE THE OBERLIN COLLEGIATE INSTITUTE"¹

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That from and after the passage of this act, the name

¹*Laws of Ohio, 1849-1850, p. 632.*

and title of THE OBERLIN COLLEGIATE INSTITUTE, at Oberlin, Lorain County, be changed to the name of OBERLIN COLLEGE; subject to all the provisions and enactments of an act to incorporate the "Oberlin Collegiate Institute," passed February 2, 1834,² and the acts amendatory thereto.

BENJAMIN F. LEITER,
Speaker of the House of Representatives.

CHARLES C. CONVERSE,
Secretary of the Senate.

Passed, March 21, 1850.

AN ACT TO AMEND SUPPLEMENTARY SECTION 3771a³

SECTION 3771a. The Board of Trustees of any university or college heretofore incorporated, but not under the patronage of conferences or other ecclesiastical bodies of any religious denomination, as described in Section 3736, may increase the number of such Trustees to twenty-four, exclusive of the president, or a less number, and may divide said Trustees into four⁴ classes, each class to serve six years, and one class to be chosen each year, for said term; but one trustee of each class may be chosen by the votes of the alumni of such university or college, if the Board of Trustees shall so provide by by-law, in which case it shall also be the duty of the Board of Trustees to provide, by such by-laws, a method of nominating and electing such appointee of the alumni. The President of such university or college shall, *ex officio*, be a Trustee perpetually, and shall not be included in the classes going out in rotation. If it shall be necessary, in the first enlargement of the board of Trustees, under this section, to distribute new members to the several classes, whose terms shall expire by rotation, the distribution may be made in such manner as the Board may direct, so that no Trustee shall be elected for a longer term than six years.

SECTION 2. That said original supplementary Section 3771a, be and the same is hereby repealed; and this act shall take effect on its passage.

NIAL R. HYSELL,
Speaker of the House of Representatives.

PERRY M. ADAMS,
President pro tem. of the Senate.

Passed, April 11, 1890.

²The date here given is erroneous. It should have been February 28, 1834. (Footnote in pamphlet entitled, *Charter and By-Laws of Oberlin College*, p. 5)

³*Revised Statutes of Ohio*, 1889.

⁴Amended, *Laws of Ohio*, 1890, p. 188 to read *six* instead of four.

JUDICIAL DECISIONS

Tax Exemption. The real estate belonging to an institution of purely public charity is exempt from taxation only when used exclusively for charitable purposes, and if such real estate is rented for commercial or residence purposes it is not exempt, even though the income arising from such use is devoted wholly to the purpose of the charity. *Benjamin Rose Institute v. Myers et al.*, 92 O. S. 252, 110 N. E. 924 (1915).

Note: The above decision governs the taxability of the property of private educational institutions in Ohio, insofar as the particular point at issue is concerned. The Benjamin Rose Institute is a private eleemosynary institution in Cleveland. Associated with it as appellant in the above case were attorneys representing Oberlin College, Hiram College, Case School of Applied Science, Western Reserve University, St. Xavier's College of Cincinnati, Kenyon College, The University of Wooster, and Ohio Wesleyan University, as well as a number of private charitable institutions of various kinds, located in different parts of the state.

UNIVERSITY OF OREGON

EUGENE, OREGON

A state university established by act of the legislature in 1872. The Law School was established in Portland in 1884 as a night school, but changed to a three-year school and moved to Eugene in 1915. The School of Medicine (in Portland) was established in 1887. Other schools are as follows: the Graduate School (1900), the School of Music (1902), the School of Education (1910), the School of Journalism (1912), the School of Architecture (1914), the School of Business Administration (1914), the School of Physical Education (1921), the Extension Division (1907), and the School of Applied Social Science (1929). Endowment in 1930, \$235,000. Total annual income, about \$1,683,000, of which nearly three-fourths was from state appropriations and millage taxes. The university is governed by the State Board of Higher Education which also governs the Oregon State College at Corvallis and the three state normal schools at Monmouth, Ashland, and La Grande, and apportions among them the proceeds of the mill-taxes for the support of higher education.

LAWS RELATING TO THE UNIVERSITY OF OREGON¹

AN ACT

To create, organize and locate the University of the State of Oregon.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY
OF THE STATE OF OREGON:

SECTION 1. A State University is hereby created, and in order to devote to the purposes of education the donation of seventy-two sections of land to the State for the use and support of a State University, made under and by virtue of an Act of Congress, passed February 14, 1859, entitled "An Act for the admission of the State of Oregon into the Union". Such University is hereby permanently located at the town of Eugene City, Oregon. The University shall have for its design, to provide instruction and complete education in all the departments of science, literature, professional pursuits and general education, and shall be known as the State University of Oregon. (Oregon Laws of 1872, page 47.)

THE OREGON STATE BOARD OF HIGHER EDUCATION²

AN ACT

To provide for the management, control, support and operation of the state institutions of higher education; to create a state board of higher education; to determine the method of its appointment; to prescribe its powers and duties; and to abolish the board of regents of the University of Oregon, the board of regents of the Oregon State Agricultural College, the board of regents of the Oregon normal schools and the board of higher curricula; providing for a survey and reorganization of the work and activities of the higher educational institutions; amending section 1, chapter 36, General Laws of Oregon, 1920 special session; repealing section 5428, 5443 and 5466, Oregon Laws and chapter 368, General

¹This exhibit consists of (1) the Act of 1872 creating the University of Oregon; (2) the Act of 1929 creating the State Board of Higher Education; (3) other acts enacted at various times affecting the university; and (4) judicial decisions involving the university.

²The following is a copy of Chapter 251, Oregon Laws of 1929, now constituting Sections 35-4501 to 35-4515, inclusive, of the Oregon Code, 1930, compiled under the supervision of the Supreme Court and printed by the Bobbs-Merrill Company of Indianapolis, Indiana.

Laws of Oregon, 1925, and all acts and parts of acts in conflict herewith, and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OREGON:

SECTION 1. There hereby is created a department of the government of the state of Oregon to be known as the department of higher education. This department shall be conducted under the control of a board of nine directors, to be known as the state board of higher education, hereinafter called the board, which board hereby is created.

SECTION 2. The directors shall be citizens of the state of Oregon and shall be appointed by the governor by and with the consent of the senate, and shall except as herein provided, hold office for a period of nine years, unless removed by the governor for cause, after notice and public hearing had. The governor may remove any member of the board at any time for cause, after notice and public hearing had, but not more than three members shall be removed within a period of four years, unless it be for corrupt conduct in office. In case the office of any director be declared vacant in the interim between legislative sessions, the senate shall act through a standing committee of six members to be known as the committee on executive appointments, which committee hereby is created, and shall be elected by the senate from its members. A favorable vote of four of the six members of this committee shall be necessary for confirmation of appointments. Directors so appointed shall be subject to the approval of the senate when it next convenes. It shall require a two-thirds vote of the senate to approve the governor's choice of a director. In case the governor's choice is disapproved, he shall make another appointment.

SECTION 3. The directors shall serve without salary, but shall receive \$10 per diem and necessary traveling expenses while on actual duty as members of the board. No director shall be in any way connected with the University of Oregon, the Oregon State Agricultural college, or any of the state normal schools, nor shall more than three alumni of these institutions, nor more than one alumnus from the university, the Oregon State Agricultural college, or the normal schools, be a member of the board at any time, nor shall any member of the board be selected from the residents of any city in which the principal office of any of the institutions of higher education hereinbefore mentioned is situated.

SECTION 4. Upon the taking effect of this act, and prior to the adjournment of the thirty-fifth legislative assembly, the governor shall appoint the members of said state board of higher education, designating the terms of office of the appoint-

ees from one to nine years, respectively, so that thereafter the term of office of one of said members shall expire each year for nine years. The successor to each of the original appointees shall be appointed for the term of nine years.

SECTION 5. The board shall organize by the election from its members of a president, who shall serve for the fiscal year for which he is elected; and of a temporary secretary, who shall serve until the appointment of an executive secretary herein provided for. The board shall meet regularly once every three months at such times and places as the president may determine. Special meetings may be called by the president or by the secretary upon the written request of any five members of the board; five members shall constitute a quorum for the transaction of business.

SECTION 6. On and after July 1, 1929, the department of higher education shall succeed to and hereby is invested with all the powers and duties of the board of regents of the University of Oregon, the board of regents of the Oregon State Agricultural college, the board of regents of the normal schools, and the board of higher curricula, which boards hereby are abolished effective July 1, 1929.

SECTION 7. The department of higher education shall succeed to and have and exercise control of all records, books, papers, equipment and supplies, and of all lands, buildings and other real and personal property now or hereafter belonging or assigned to the use or benefit, or under the control of each and all of said boards mentioned in section 6 of this act, and shall have and exercise control of the use, distribution and disbursement of all funds, appropriations and taxes now or hereafter in possession, levied and collected, received or appropriated for the use, benefit, support and maintenance of institutions of higher education, including the authorization of individuals to sign vouchers for the disbursement of funds for the various institutions. The respective boards referred to in section 6 of this act shall make an inventory of all said property, which property and inventory shall be turned over to the department of higher education.

SECTION 8. The moneys appropriated by the thirty-fifth legislative assembly for the University of Oregon, the Oregon State Agricultural college, and the normal schools of the state of Oregon, and all other funds which are now or may hereafter become available for the support, maintenance and benefit of said institutions, shall be available for the purposes respectively set forth in the acts making such appropriations and in the fourth state budget for each of said institutions for the biennium beginning January 1, 1929, and ending December 31, 1930; provided, that the board may prorate all expenses not other-

wise provided for, incurred under authority of this act, to the institutions under its control, and pay the same from the funds available for the general expenses of those institutions.

SECTION 9. As soon as practicable after the passage of this act the board shall secure the assistance of some nationally recognized, impartial authority or authorities in making a complete survey covering the present conditions and future needs of all branches of state-supported higher education and scientific research in Oregon. This survey shall include a study of the experience of other states in dealing with similar higher educational problems to those confronting this state. The results of this survey shall be embodied in a report, on the basis of which the board shall proceed to draft a program of higher educational development adapted to the needs of the state, taking into consideration its population, resources and taxpaying ability.

SECTION 10. The board shall inaugurate its program beginning July 1, 1931, and shall have full authority to reorganize the work of each and all of the institutions under its control so as to eliminate unnecessary duplication of equipment, courses, departments, schools, summer schools, extension activities, offices, laboratories and publications.

SECTION 11. The board shall prescribe for all state-supported higher educational institutions a standardized system of accounts and records and shall prepare biennially, at such time as he shall require, a report to the governor containing the proposed budget for the succeeding biennium covering in detail the purposes for which all expenditures shall be made. In the preparation of this budget the board shall have authority to allocate to the respective institutions over which it is authorized to exercise supervision and control all funds then available and all funds which under laws then existing shall become available during the succeeding biennium from all sources, so far as they can be ascertained, in accordance with the program of said board, provided for in section 10 of this act.

SECTION 12. The board shall hire an executive secretary, who shall be thoroughly qualified by educational training, ability and experience to keep the members fully informed at all times regarding the progress of the work of the department. He shall maintain his residence at Salem, Oregon, and his office at the statehouse; and shall have access at all times to the books, records, property, business offices, classrooms, libraries and other equipment of all institutions, departments and offices, under the jurisdiction of the board.

SECTION 13. All advertising and publicity on behalf of all branches of state-supported higher education shall emanate from and bear the name of the department of higher education,

and shall be conducted in such a way as to present to the citizens of the state and prospective students a fair and impartial view of the higher educational facilities provided by the state, and the prospects for useful employment in the various fields for which those facilities afford preparation.

SECTION 14. All relationships and negotiations between the state legislature and its various committees and the institutions of higher education shall be carried on through the department of higher education. No subordinate official representing any of the separate institutions shall appear before the legislature or any committee except upon the written authority of the board.

SECTION 15. That section 1, chapter 36, General Laws of Oregon, 1920 special session, be and the same hereby is amended so as to read as follows:

Sec. 1. That there shall be included in the state levy of taxes each year an amount equal to two and four-hundredths mills on the dollar of the total value of all taxable property of the state of Oregon according to the assessment and equalization thereof for said year, for the use of the Oregon Agricultural college, the University of Oregon and the state normal schools.

SECTION 16. The directors shall encourage gifts to the institutions by faithfully devoting such funds to the institution for which they may be intended, and by other suitable means. All gifts raised by any institution or given to it shall be held for the exclusive use of such institution, subject to the terms of gift, if any.

SECTION 17. That sections 5428, 5443 and 5466, Oregon Laws, and chapter 368, General Laws of Oregon, 1925, and all acts or parts of acts in conflict herewith be and the same hereby are repealed.

SECTION 18. It is hereby adjudged and declared that existing conditions are such that this act is necessary for the immediate preservation of the public peace, health and safety; and, since the proper conduct of the educational system of the state demands that the senate participate in and approve the appointment of the members of the state board of higher education, an emergency hereby is declared to exist, and this act shall take effect and be in full force and effect from and after its passage.

Approved by the governor March 1, 1929.

Filed in the office of the secretary of state March 1, 1929.

AN ACT³

To amend section 35-4502, Oregon Code 1930, relating to the appointment and confirmation of directors of the state board of higher education.

³*Oregon Laws*, 1931, Chapter 41.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OREGON:

SECTION 1. That section 35-4502, Oregon Code 1930, be and the same hereby is amended so as to read as follows:

SECTION 35-4502. Appointment of Directors; Qualifications; Term of Office. The directors shall be citizens of the state of Oregon and shall be appointed by the governor by and with the consent of the Senate, and shall, except as herein provided, hold office for a period of nine years, unless removed by the governor for cause, after notice and public hearing had. The governor may remove any member of the board at any time for cause, after notice and public hearing had, but not more than three members shall be removed within a period of four years, unless it be for corrupt conduct in office. In case the office of any director be declared vacant or an appointment is made in the interim between legislative sessions, the senate shall act through a standing committee of six members to be known as the committee on executive appointments, which committee hereby is created, and shall be elected by the senate from its members. Within 10 days after the interim appointment by the governor, the secretary of state shall call a meeting of the committee on executive appointments to meet at some place in the state mutually satisfactory to the committee or at the state capitol, and the committee on executive appointments shall act at such meeting or adjournments thereof. Senators attending such meetings shall receive necessary traveling and living expenses in attending and traveling to and from such meetings and the secretary of state hereby is authorized and directed to audit and allow all such claims as shall be approved by said committee or one of its members authorized so to do and draw his warrants on the state treasurer for the payment thereof out of the appropriation for the payment of expenses of the legislative assembly electing such committee in the same manner as other expenses of the session are audited and paid. A favorable vote of four of the six members of the committee on executive appointments shall be necessary for confirmation of appointments. Directors so appointed shall be subject to the approval of the senate when it next convenes. It shall require a two-thirds vote of the senate to approve the governor's choice of a director. In case the governor's choice is disapproved, he shall make another appointment.

UNIVERSITY OF OREGON

Note: The following sections of Olson's Oregon Laws 1920, were not specifically repealed by Chapter 251, Oregon Laws 1929, enumerating the powers of the State Board of Higher

Education, and are not inconsistent therewith. Hence they still form a part of the legal basis of the University of Oregon. Since the Board of Regents no longer exists, the following sections apply to its successor, the State Board of Higher Education.

SECTION 5416. Powers and Duties of Board of Regents. The general powers and duties of the board of regents shall be as follows:

1. To control and provide for, subject to the conditions herein made, the custody and occupation of the university grounds and buildings, and the books, papers, and documents belonging to the university;

2. To manage, control, and apply all property, of whatever nature, which may hereafter be given to or appropriated for the use, support, or benefit of the university, according to the terms and conditions of such gift or appropriation;

3. To appoint and employ a president of the university, and the requisite number of professors, teachers, and employees, and to prescribe their compensation and tenure of office or employment;

4. To demand and receive the interest mentioned in section 5424, and all sums due and accruing to the university for admission and tuition therein, and apply the same, or so much thereof as may be necessary to the payment of the compensation aforesaid, and the other current expenses of the university;

5. To prescribe a fee for admission into said university, to be applied to the payment of incidental expenses, and the rate of tuition for instruction therein;

6. To supervise the general course of instruction in the university, and to enact rules and by-laws for the government thereof, including the faculty, teachers, students, and employees therein;

7. To confer, on the recommendation of the faculty, such degrees as are usually conferred by universities, or as they shall deem appropriate; and

8. To prescribe the qualifications for admission into the university.

SECTION 5419. No Political or Sectarian Test Allowed. No political or sectarian test shall ever be allowed or applied in the appointment of regents, professors, teachers, or employees of the university nor shall the majority of the regents be, at any one time, members of any one religious denomination, or be appointed from or reside within any one county.

SECTION 5421. Reports to the Governor. At the close of each fiscal year the president of the board of regents shall make a report to the governor of the state, showing the transactions

of the board, the progress, condition, and wants of the university, the number of professors, teachers, and students therein, the amount of receipts, disbursements, and such other matters as may be deemed important.

SECTION 5422. The Faculty and Their Powers. The president and professors constitute the faculty of the university, and as such shall have the immediate government and discipline of it and the students therein; but in all matters connected with the government and discipline of the preparatory department, the teachers therein shall be heard and consulted. The faculty shall also have power, subject to the supervision of the board of regents, to prescribe the course of study to be pursued in the university, and the textbooks to be used.

SECTION 5423. President of the University and Duties of. The president of the university is also president of the faculty, but whenever required by the board of regents, he shall perform the duties of a professorship; he is also the executive and governing officer of the school, except as herein otherwise provided; and subject to the supervision of said board, he has authority to control and give general directions to the practical affairs of the school.

DORMITORIES⁴

SECTION 35-5001. Construction authorized—Rental contract plan—Amortization—Interest rate. The board of regents of the Oregon State Agricultural college, the board of regents of the University of Oregon and/or the board of regents of normal schools hereby are authorized to enter into contracts with persons, firms or corporations for the erection of buildings for dormitory, housing and boarding purposes; and either of said boards is further authorized to purchase or lease lands and other appurtenances necessary for the construction of such buildings, and to purchase or lease lands with buildings constructed thereon suitable for the purpose aforesaid; and either of said boards of regents is also authorized to lease to any person, firm or corporation such portions of the campus of the Oregon State Agricultural College, of the University of Oregon, of the Oregon Normal school at Monmouth, of the Southern Oregon State Normal school and/or of the Eastern Oregon State Normal school as may be necessary for the construction of buildings for the purposes aforesaid and the reasonable use thereof; provided, that the state of Oregon shall incur no liability by reason of the exercise of the authority hereby granted

⁴Sections 35-5001 through 35-5202, printed here, are from Oregon Code, 1930, published by the Bobbs-Merrill Company and used by their permission.

to either of the said boards of regents aforesaid other than as hereinafter specifically set forth; and provided further, that such lands, buildings or appurtenances shall be used solely for such dormitory, housing or boarding purposes in said college, said university, or any of said normal schools. Said boards of regents hereby are respectively authorized to contract to pay as rental or otherwise a sum sufficient to pay, on the amortization plan, the principal and interest thereon, of the purchase price of said lands and buildings or the erection costs of said buildings or appurtenances, such contracts to run not over twenty years. The rate of interest on the principal on any such purchase or erection cost shall not exceed 7% per annum, payable semiannually or annually, as determined, respectively, by said board of regents. [L. 1929, ch. 324, section 1, p. 362.]

SECTION 35-5002. Pledge of rentals. Either of said boards of regents hereby is authorized to expend on the amortization plan any part of the rentals of any or all rooms, dormitories, dining rooms or housing buildings, lands or the appurtenances thereon, and to pledge on behalf of said college, said university, and/or either of said normal schools aforesaid, the net income from said rentals for the payment of all rentals or erection or other contract charges agreed to be paid on account of such dormitory or dormitories, dining room or housing buildings, lands or appurtenances. [L. 1929, ch. 324, section 1, p. 362.]

SECTION 35-5003. Repealing section—Saving clause. Chapter 289, General Laws of Oregon, 1927, be and the same hereby is repealed; provided, however, that all rights and obligations arising under the provisions of said chapter 289 shall not in any way be affected by this repeal, and that said act shall be considered as in full force and effect for the purpose of carrying out all duties and obligations contracted or arising under said chapter prior to the taking effect of this act. [L. 1929, ch. 324, section 3, p. 362.]

UNSUITABLE EQUIPMENT

SECTION 35-5101. Power to sell or dispose of—Procedure. The board of regents of the state university, and the board of regents of the agricultural college of the state of Oregon, and the board of regents for normal schools shall be, and hereby are, severally authorized and empowered to sell or otherwise dispose of any worn out, obsolete or otherwise unsuitable equipment or material which any of said boards may at any time have on hand, the disposal of which would in the judgment of said board be to the financial benefit of the institution under the control of said board; provided, however, that the board so desiring to dispose of or sell any such equipment or

material shall first submit to the "Oregon [state] board of control" a proposal for such sale or disposal and shall secure from said board of control its formal approval of such proposed sale or disposal before the same shall be consummated. [L. 1919, ch. 21, section 1, p. 36; O. L. section 5468.]

SECTION 35-5102. Disposition of proceeds. The proceeds from any sale or disposals made pursuant to authority granted herein shall be deposited in the state treasury to the credit of the board making such sales, and may be expended by said board for any purpose authorized by law in the same manner as it is authorized to make other expenditures. [L. 1919, ch. 21, section 2, p. 36; O. L. section 5469.]

MILL-TAX

SECTION 35-5201. Amount of tax—Higher educational institutions. There shall be included in the state levy of taxes each year an amount equal to two and four-hundredths mills on the dollar of the total value of all taxable property of the state of Oregon according to the assessment and equalization thereof for said year, for the use of the Oregon Agricultural college, the University of Oregon and the state normal schools. [L. 1920 (Sp. Sess.) ch. 36, section 1, p. 68; L. 1929, ch. 251, section 15, p. 251.]

SECTION 35-5202. Apportionment and use of tax fund. The funds so provided for said institutions of learning, and all sums of money produced under this law are hereby appropriated in addition to that now provided by law for the support and maintenance thereof, including the payment of salaries of instructors and employees, current expenses, construction of additional buildings, purchase of lands, purchase of equipment, purchase of library books and periodicals, purchase of laboratory supplies and apparatus, making necessary repairs, and, in general, for the payment of all such expenses connected with the management of said institutions, as the board of regents thereof may from time to time determine, and the same shall constitute a continuing appropriation for the benefit of such institutions, and any amount remaining to the credit of each and all of the said institutions at the close of any fiscal year shall be carried over and credited to the account of the respective institutions for the succeeding year, and any claims otherwise payable shall, when duly approved, be paid from such funds regardless of the time when they are incurred. Said funds shall be paid out only on warrants of the secretary of state on the state treasurer, based on duly verified vouchers in the manner that state claims are paid. [L. 1920, (Sp. Sess.) ch. 36, section 2, p. 68.]

JUDICIAL DECISIONS

Corporate Status. On the principle that where rights are granted to an association of persons by a collective name, and those rights can not be enjoyed without acting in a corporate capacity, such association is a corporation. The act of October 19, 1872, creating the Board of Directors of the University of Oregon and giving it power to hold and convey land for the benefit of the university and to transmit title to its successors, made the board a corporation. *Dunn v. Oregon University*, 9 Or. 357 (1881).

Constitutionality of Bond Issue for Dormitory Construction. The action of the Board of Regents of the state university pursuant to sections 1 and 2, page 364, Laws of 1927, authorizing sale of bonds for construction of a dormitory with the only liability against a special fund to be made up exclusively of net rentals therefrom, did not violate section 7 of article 11 of the Oregon Constitution, which limits state indebtedness. Indebtedness of the university is indebtedness of the state; but the amortization plan under which the dormitory is to be built and maintained and eventually become state property, creates no general liability against the university or the state. *McClain v. Regents of the University*, 124 Ore. 629, 265 Pac. 412 (1928).

Constitutionality of Law Creating State Board of Higher Education. General Laws of 1929, page 256, creating the Board of Higher Education and authorizing it to allocate to the several educational institutions in its discretion the funds received through various tax levies, is not an unconstitutional delegation of legislative authority, but merely confers on the board as agent of the state certain administrative duties. The appointment of members of the board for terms of 9 years does not violate section 2 of article 15 of the Constitution of Oregon, prohibiting the creation of any office the tenure of which shall be longer than 4 years, because members of the Board of Higher Education are not officers within the meaning of the constitutional provision. *Smith v. Patterson*, 130 Ore. 73, 279 Pac. 271 (1929).

UNIVERSITY OF PENNSYLVANIA

PHILADELPHIA, PENNSYLVANIA

A privately controlled, non-denominational university, co-educational except in certain schools. First established as a charitable school in 1740. Chartered in 1753 as the Academy and Charitable School in the Province of Pennsylvania, and in 1755 as "The College and Academy of Philadelphia". In 1779 its rights and properties were conferred on a new institution, "The University of the State of Pennsylvania". In 1789 the charter was restored, and in 1791 the College of Philadelphia and the University of the State of Pennsylvania were joined under the present corporate title "The Trustees of the University of Pennsylvania". The School of Medicine (1765) is the oldest in the United States. The university consists of the following divisions: the College, the Towne Scientific School, the Moore School of Electrical Engineering, the Wharton School of Finance and Commerce, the School of Education, the School of Fine Arts, the Graduate School, the School of Medicine, the Law School, the School of Dentistry, the School of Veterinary Medicine, the Graduate School of Medicine, and other auxiliary and affiliated agencies of resident and extension instruction.

CHARTER OF THE UNIVERSITY OF PENNSYLVANIA¹

AN ACT

To unite the University of the State of Pennsylvania, and the College, Academy, and Charitable School of Philadelphia, in the Commonwealth of Pennsylvania.—September 30th, 1791.

WHEREAS, the trustees of the university of the state of Pennsylvania, and the trustees of the college, academy, and charitable school of Philadelphia, in the commonwealth of Pennsylvania, by their several petitions have set forth, that they have agreed to certain terms of union of the said two institutions, which are as follows:

First.—That the name of the institution be "*The University of Pennsylvania*," and that it be stationed in the city of Philadelphia.

Second.—That each of the two boards shall elect, from among themselves, twelve persons, who, with the governor for the time being, shall constitute the board of trustees of the university of Pennsylvania; and that the governor shall be president.²

Third.—That the professors which shall be deemed necessary to constitute the faculty in the arts and medicine, respectively, shall be taken from each institution equally; and in case of an odd number, such one to be taken from either by the choice of the trustees; and that the provost and vice-provost, or the principal officer or officers of the faculty, by whatever name or names they may be called, shall be chosen from among the professors so appointed.

Fourth.—That charity schools shall be supported, one for boys, and the other for girls.

Fifth.—That for the future every vacancy in the board, except that of governor, shall be filled up by election by ballot,

¹From a pamphlet entitled, *Proprietary Charters and Acts of Assembly Relating to the University*. pp. 39–42. Published by the University, October, 1912.

²On November 3, 1927 the Trustees agreed to petition the Court of Common Pleas for an amendment to the charter of the University: (1) To enlarge the number of Trustees from twenty-four to forty (or forty-one, including the Governor, *ex officio*); (2) Trustees to be elected and hold office as provided for in the Rules and Statutes of the University; (3) Trustees to be authorized to conduct educational activities anywhere within the Commonwealth. The Court of Common Pleas Number 5, of Philadelphia County granted this petition in a decree handed down on November 18, 1927.

by a majority of the members present, at any meeting of the new board, the members present to be at least thirteen; that due and timely notice of such election be at all times given, and that no person shall be elected to fill up such vacancy at the same meeting in which he shall be nominated.

Sixth.—That the funds and property of the institutions shall be united, and vested in the new trustees.

Seventh.—That the professors and officers composing the faculty shall be elected by a majority of the members present at any meeting of the new board, the number present to be at least thirteen; that due and timely notice of such election shall at all times be given, and that no person or persons shall at any time be elected such professor or officer at the same meeting in which he shall be nominated.

Eighth.—That no professor or officer of the faculty shall be removed by a less number than two-thirds of the members present at any meeting of the new board, the members present to be at least thirteen; and that due and timely notice of such intended removal shall at all times be given, and that no person or persons shall at any time be removed at the same meeting in which such removal shall be proposed.

Ninth.—That the board of trustees shall annually lay before such persons, as the legislature shall in the incorporating act direct, a statement of the funds of the institution.

And the said trustees, by their several petitions have prayed, that a law may be passed to enable them to carry the said terms of union into effect, and to incorporate them in one body, according to the purpose and intention expressed in the said terms of union.

SECTION 1. *Be it therefore enacted,* That, in pursuance of the second article of the said terms of union, the trustees of the university shall elect twelve persons from among themselves to be trustees of the said university after the union, and shall certify the names of the said twelve persons, so elected, to the governor of this commonwealth, on or before the first day of December next; and that the trustees of the said college, academy, and charitable school, shall elect twelve persons from among themselves, to be trustees of the said university after the union, and shall certify the names of the said twelve persons, so elected, to the governor of this commonwealth, on or before the first day of December next.

SECTION 2. *And be it further enacted,* That from and after such certificates of the elections being so made to the governor, as aforesaid, the said twenty-four persons so elected and certified, together with the governor for the time being, who shall

always be president, and their successors, duly elected, and appointed, as herein and by the said terms of union is directed, be, and they are hereby made and constituted a corporation and body politic, in law and in fact, to have continuance for ever by the aforesaid name, style, and title of "THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA," and that the said university shall at all times be stationed in the city of Philadelphia.

SECTION 3. *And be it further enacted*, That the said trustees, and their successors, shall be able and capable in law to sue and be sued, by the name, style, and title aforesaid, and to have and to make one public and common seal, and also one private seal to use in their affairs, and the same, or either of them, to break and alter at their pleasure; and to make rules and statutes not repugnant to the laws and constitution of this state, or of the United States of America, and to do everything needful and necessary to the establishment of the said university, and for their own good government, and the good government and education of the youth belonging to the same, and to constitute a faculty, or learned body to consist of such head or heads, and such a number of professors in the arts and sciences, and in law, medicine, and divinity, as they shall judge necessary and proper, consistent with the aforesaid articles of union.

SECTION 4. *And be it further enacted*, That all and every the estates, real, personal, and mixed, moneys, effects, debts, claims, and demands, either in law or equity, which at present are vested in, or belong to each of the two boards of the trustees of the said university, and of the said college, academy, and charitable school, who are hereby united and incorporated together, shall be, and they hereby are, transferred to and vested in the said trustees herein directed to be appointed and incorporated, and their successors, with full power to take, receive, hold, use, recover, and enjoy the same, according to the purpose, true intent, and meaning of this act, and that in like manner, all claims, rights, and demands, of any person or persons, bodies politic and corporate, against either of the said two boards, shall be and remain valid and effectual against the trustees herein directed to be appointed and incorporated, and their successors, with power to demand, receive, and recover the same, as if they had been originally contracted by, or due, or recoverable from the said trustees herein directed to be appointed and incorporated.

SECTION 5. *And be it further enacted*, That pursuant to the ninth article of the terms of union, the trustees shall annually lay a statement of the funds of the institution before the legislature of the commonwealth.

EARLIER CHARTER PROVISIONS IN REGARD TO TRUSTEES³

1. The University of Pennsylvania is the outgrowth of an "Academy and Charitable School in the province of Pennsylvania," organized in 1740 and chartered July 13, 1753. This charter provided for the control of the institution by a board of twenty-four designated persons "and such others, as shall be from time to time chosen, nominated, or elected in their place and stead" The corporate title was "The Trustees of the Academy and Charitable School in the province of Pennsylvania." This board was made self-perpetuating and it was required that all members live within five miles of the Academy and in the province of Pennsylvania. (This latter provision was omitted from the "Additional Charter," granted June 16, 1755.) *Op. Cit.* pp. 1-7.

2. The "Additional Charter" of 1755 changed the corporate name to "The Trustees of the College, Academy, and Charitable School of Philadelphia, in the province of Pennsylvania." The Trustees were authorized to appoint a Provost, a Vice-Provost and professors for the College, to "be known and distinguished as one body and faculty, by the name of The Provost, Vice-Provost, and Professors of the College and Academy of Philadelphia, in the province of Pennsylvania." (*Ibid.* pp. 8-17.)

It was required that at least thirteen of the Trustees authorize the granting of degrees and "that no person or persons, excepting the students belonging to the said seminary, shall ever, at any time or times, be admitted to any such degree or degrees, unless with the express mandate of at least two-thirds of the whole number of trustees"

3. An Act of November 27, 1779 abolished the board and faculty and, in effect, established the provisions of the Act as a new charter, designating the institution as the "University of the State of Pennsylvania." Section 9 of this Act provided for a board consisting of the following:

" . . . the president of the supreme executive council of this commonwealth, the vice-president of the same council, the speaker of the general assembly, the chief justice of the supreme court of judicature, the judge of admiralty, and the attorney-general for the time being, in virtue of their several offices, and the senior minister in standing of the episcopal churches and congregations, and the senior minister in standing of the presbyterian churches, and the

³These data in regard to earlier provisions are from the pamphlet published by the University in 1912, *Proprietary Charters and Acts of Assembly Relating to the University*. The *Session Laws of the Commonwealth*, from 1912 to 1931, were examined for possible changes of importance since that time.

senior minister in standing of the baptist churches, and the senior minister in standing of the Lutheran churches, and the senior minister in standing in the German calvinist churches, and the senior minister in standing in the Roman churches, whose churches or houses of public worship are or shall be in the city of Philadelphia, or within two miles of the old court house in High Street, in the said city, together with the honourable Benjamin Franklin, doctor of laws, minister pleni-potentiary from the United States of America to his most Christian majesty; the honourable William Shippen, Frederick Muhlenberg, and James Searle, esquires, delegates in the congress of the said United States for Pennsylvania; the honourable William Augustus Atlee, esquire, and the honourable John Evans, esquire, justices of the supreme court of judicature; Timothy Matlack, esquire, secretary of the supreme executive council of this state; David Rittenhouse, esquire, treasurer of this state; Jonathan Bayard Smith, esquire; Samuel Morris, senior, esquire; George Bryan, esquire; Thomas Bond, doctor of physic; and James Hutchinson, doctor of physic; which said civil officers, ministers of the gospel, and others herein mentioned and appointed, for and during their continuance in the said office and stations respectively, their abode in this state, and lawful capacity to act, and their successors for ever hereafter, shall be, remain, and continue the trustees aforesaid, by the name, style, and title of The Trustees of the University of the State of Pennsylvania" (*Ibid.* p. 22.)

Seven members were constituted a quorum for the transaction of business except that of the choice of new trustees, "the nominating and constituting, or the dismissing of the future Provost," etc., for which business eleven were necessary to constitute a quorum. The board was authorized to fill vacancies, subject to the approval of the House of Assembly. It was required that the trustees submit the books and records of the corporation to the examination of visitors to be appointed from time to time by the General Assembly. (*Ibid.* pp. 18-27.)

4. By an Act of September 22, 1785 absence for six months from meetings of the Board was made the basis for declaring the seat vacated and for the election of a new member to take the place. (*Ibid.* pp. 30-32.)

5. By an Act of March 6, 1789 all parts of the Act of 1779 which conflicted with the rights and privileges granted in the *Charter* of 1753 and the *Additional Charter* of 1755, were repealed, and the survivors of the original trustees and their successors were reinstated, and authorized to regain possession of the institution. (*Ibid.* pp. 33-38.)

The next change in the government of the institution was provided for in the Act of 1791, which is in force as the present charter of the University of Pennsylvania. Since the Act of 1791 there have been a number of acts in regard to the University of Pennsylvania, pertaining to exemption from taxation, conveyance of real estate, extension of the limits of the income of the corporation and its property holdings, etc. Among these are the following:

Act of Legislature: March 19, 1807. (P. L. 87) Granting to the Trustees of the University of Pennsylvania a sum of money for the purpose of enabling them to establish a Botanical Garden.

Various acts (especially since 1874) making appropriations for specific purposes or general maintenance.

Act of May 5, 1832: (P. L. 517) To exempt the property of the University of Pennsylvania from taxation for fifteen years.

Act of March 7, 1837: (P. L. 39) To authorize the Trustees of the University of Pennsylvania to sell and convey certain real estate, and for other purposes. (Permission given to apply a trust fund for a botanical garden to other purposes.)

Act of May 11, 1871: (P. L. 752) Extending the limits of income of the Trustees of the University of Pennsylvania.

Act of April 3, 1873: (P. L. 506) To abrogate certain restrictions contained in the patent from the Commonwealth (etc.) for certain lots of ground on Chestnut, Ninth, and High (now Market) Streets, in the City of Philadelphia.

Resolution of State Senate: June 13, 1923, by which each Senator is to have the right to appoint each year three students on free scholarships. (This means that each Senator has at any given time twelve students in the University on his appointment.)

JUDICIAL DECISIONS

Compensation for Property when Divested Thereof.

The Trustees of the University of Pennsylvania are entitled to compensation for lands and ground rents reserved to them, in case they are evicted therefrom. It is immaterial that no consideration was paid by them for the lands in question. *University of Pennsylvania v. Commonwealth*, 1 Yeates 495 (1795).

Adjustment of Annuity from Donor. In the distribution of a decedent's estate where there is a deficiency after the payment of debts, expenses and specific legacies, the loss is to be borne entirely and proportionally by those pecuniary legacies which are in their nature general. An annuity charged on the

personal estate is for this purpose deemed a general legacy. Thus an annuity received by the university from the estate of the deceased was reduced on account of a deficiency which reduced all general legacies of the decedent. *Appeal of the Trustees of the University of Pennsylvania*, 97 Pa. 187 (1881).

Validity of Subscription. Where subscribers agree to pay to the university "at such time as it shall request", the sums respectively set opposite their names "for the university museum," and the trustees of the university incur obligations and enter into contracts for the construction of the museum, there is a good consideration for the subscription agreement, and the death of a subscriber does not relieve his estate. Nor will the estate be relieved by the fact that the decedent in his will gave legacies for purposes specifically stated, but not in any way connected with the purposes for which the subscription agreement was made. *University of Pennsylvania's Trustees v. Coxé's Executors*, 277 Pa. 512, 121 Atl. 314 (1923).

PRINCETON UNIVERSITY

PRINCETON, NEW JERSEY

A privately controlled university for men, first chartered in 1746 as the College of New Jersey. Name changed to Princeton University in 1896. Consists of the College and the Graduate School. Endowment in 1930 exceeded \$23,000,000, and total annual income in 1930 was more than \$2,700,000. Bequests to the university are exempt from the state inheritance tax. It also enjoys a limited exemption from taxation of real and personal property used for educational purposes.

CHARTERS OF PRINCETON UNIVERSITY¹

STATEMENT CONCERNING THE ORIGINAL CHARTER

The first Charter passed the Great Seal of the Province of New Jersey on the 22d of October, A. D. 1746. This appears from the facts hereinafter stated, viewed in connection with a Record in the office of the Secretary of State of the State of New Jersey, of which the following is the print of a certified copy.

EXTRACTS FROM THE RECORDS OF THE PROVINCE OF NEW JERSEY

A Charter to incorporate sundry persons to found a College pass'd the great seal of this Province of New Jersey, tested by John Hamilton, Esq., President of His Majesty's council, and commander in chief of the Province of New Jersey, the 22d October, 1746.

STATE OF NEW JERSEY, }
DEPARTMENT OF STATE, } ss

I, Henry C. Kelsey, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of a certain record as the same is taken from and compared with the original record recorded in Book C 2 of Commissions, on page 137, and now remaining on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at Trenton, this twenty-fifth day of March, A. D. 1891.

(Signed) HENRY C. KELSEY,
Secretary of State.

The Charter thus mentioned has been lost—certainly for more than a century. Strange to say, no transcript of it was entered upon the Records of the Province, and no copy, so far as can be ascertained by the authorities of the University, is in existence. It was recently discovered, however, that an extended “Notice,” published at Philadelphia, A. D. 1747, in two Philadelphia journals, contained what is clearly a full abstract of the lost instrument. The papers containing this

¹From a pamphlet entitled, *The Charters of the Trustees of Princeton University*. The Princeton University Press, 1920.

Notice are the *Pennsylvania Journal*, in its issues of August 13th, 27th, and September 10th, and the *Pennsylvania Gazette*, in its issues of August 13th and 27th. A copy of this document is given below.

It is manifest, from the date assigned in the Notice to the Charter mentioned therein, viz., October 22, 1746, that the instrument mentioned was the one whose passage of the Great Seal was recorded, as above set forth, in the Records of the Province of New Jersey. It will also appear, upon a comparison of the Notice with the Charter of the College of New Jersey, granted A. D. 1748, that the Charter mentioned in the former relates to the institution contemplated in the latter.

The names of the corporators and the provisions of the two instruments are almost identical,² and the facts set forth in the notice concerning the establishment of a College correspond with well-established facts in the history of what, for one hundred and fifty years, was known as the College of New Jersey. On February 13th, 1896, under legislative authority, the corporate name of the institution was changed from The Trustees of the College of New Jersey to The Trustees of Princeton University.

NOTICE

These are to give Notice to All Concerned

That by His Majesty's Royal Charter for erecting a College in New Jersey, for the instruction of youth in the learned Languages and in the liberal Arts and Sciences, bearing date October 22nd, 1746, Messrs. William Smith, Peter Vanbrugh Livingston, William Peartree Smith, Gent., and Messrs. Johnathan Dickinson, John Pierson, Ebenezer Pemberton, and Aaron Burr, Ministers of the Gospel, are appointed Trustees of the said College; with full power to any four or more of them, to chuse five more Trustees to the exercise of equal power and authority in the said College with themselves. By virtue of which power, the said Trustees, nominated in the Charter, have chosen the Rev. Messrs. Gilbert Tennant, William Tennant, Samuel Blair, Richard Treat, and Samuel Finley, as Trustees of the said College of New Jersey: Which Trustees are by the said Charter, constituted a body corporate and polittick, both in fact and name, with full power to act as such to

²The number of Trustees (original and elected) mentioned in the notice was only twelve. All of these gentlemen, with the exception of the Rev. Messrs. Dickinson and Finley, were amongst the corporators mentioned in the Charter of 1748. Of the two gentlemen excepted it should be noted that the Rev. Mr. Dickinson died in 1747, before the granting of the second charter; and that the Rev. Mr. Finley was elected a Trustee in 1751. Dr. Finley held his office as Trustee until 1761, in which year he assumed the office of President of the institution.

all intents and purpose, and rendered capable of a perpetual succession to continue forever. By which Royal Charter, there is authority given to the major part of any seven or more of the said Trustees, and their successors conven'd for that purpose, to purchase, receive, and dispose of any possessions, tenements, goods and chattels, gifts, legacies, donations, and bequests, *rents*,³ profits, and annuities of any kind whatsoever, and to build any house or houses, as they shall think proper, for the use of the said College. And also by the said Charter is given to the major part of any seven or more of the said Trustees and their successors, full power to chuse, and at pleasure to displace, a President, Tutors, Professors, Treasurer, Clerk, Steward and Usher, with any other ministers and officers as are usual in any of the Universities or Colleges in the realm of Great Britain. And also by the said Charter, is given to the major part of any seven or more⁴ of the said Trustees and their successors, full power to make any laws, acts and ordinances, for the government of the said College, as are not repugnant to the laws and statutes of the realm of Great Britain, nor to the laws of the Province of New Jersey; provided, that no person be debarred any of the privileges of the said College on account of any speculative principles of religion; but those of every religious profession have equal privilege and advantage of education in the said College. And also by the said Charter, power is given to the major part of any seven of the said Trustees and their successors, by their President, or any other appointed by them, to give any such degrees as are given in any of the Universities or Colleges in the realm of Great Britain, to any such as they shall judge qualified for such degrees; and power to have and use a common seal to seal and confirm diplomas or certificates of such degrees, or for any other use which they shall think proper.

And these may further notify all concerned, that the said Trustees have chosen the Rev. Mr. Jonathan Dickinson, President, whose superior abilities are well known; and Mr. Caleb Smith, Tutor, of the said College; and that the College is now actually opened, to be kept at Elizabeth-Town, till a building can be erected in a more central place of the said⁵ province for the residence of the students; that all who are qualified for it, may be immediately admitted to an academick education, and to such class and station in the College, as they are found upon examination to deserve; and that the charge of the College to each student, will be Four Pounds a year New Jersey money, at Eight Shillings per ounce, and no more.

³As in *Gazette*; omitted in *Journal*.

⁴As in *Journal*; omitted in *Gazette*.

⁵As in *Gazette*; omitted in *Journal*.

THE SECOND CHARTER
OF THE COLLEGE OF NEW JERSEY*

[September 14th, 1748]

GEORGE THE SECOND, by the grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, etc., to all to whom these presents shall come, greeting—

WHEREAS sundry of our loving subjects, well-disposed and public-spirited persons, have lately, by their humble petition, presented to our trusty and well-beloved Jonathan Belcher, Esquire, Governor and Commander in Chief of our province of New Jersey in America, represented the great necessity of coming into some method for encouraging and promoting a learned education of our youth in New Jersey, and have expressed their earnest desire that a college may be erected in our said province of New Jersey in America, for the benefit of the inhabitants of the said province and others, wherein youth may be instructed in the learned languages, and in the liberal arts and sciences, AND WHEREAS by the fundamental concessions made at the first settlement of New Jersey by the Lord Berkley and Sir George Carteret, then proprietors thereof, and granted under their hands and the seal of the said province, bearing date the tenth day of February, in the year of our Lord one thousand six hundred and sixty-four, it was, among other things, conceded and agreed, that no freeman, within the said province of New Jersey, should at any time be molested, punished, disquieted or called in question, for any difference in opinion or practice in matters of religious concernment, who do not actually disturb the civil peace of the said province; but that all and every such person or persons, might, from time to time, and at all times thereafter, freely and fully have and enjoy his and their judgments and consciences, in matters of religion, throughout the said province, they behaving themselves peaceably and quietly and not using this liberty to licentiousness, nor to the civil injury or outward disturbance of others, as by the said concessions on record in the Secretary's office of New Jersey, at Perth Amboy, in lib. 3, folio 66, etc., may appear. WHEREFORE and for that the said petitioners have also expressed their earnest desire that those of every religious denomination may have free and equal liberty and advantages of education in the said college, any different senti-

*By authority of the General Act of the Legislature approved April 12th, 1894, page 38, and by action of the Board of Trustees taken February 13th, 1896, page 40, the corporate title of "THE TRUSTEES OF THE COLLEGE OF NEW JERSEY" was on October 22d, 1896, changed to "THE TRUSTEES OF PRINCETON UNIVERSITY."

ments in religion notwithstanding, WE being willing to grant the reasonable requests and prayers of all our loving subjects, and to promote a liberal and learned education among them—

KNOW YE THEREFORE, that we, considering the premises, and being willing for the future that the best means of education be established in our said province of New Jersey, for the benefit and advantage of the inhabitants of our said province and others, do, of our special grace, certain knowledge and mere motion, by these presents, will, ordain, grant, and constitute, that there be a college erected in our said province of New Jersey, for the education of youth in the learned languages and in the liberal arts and sciences;⁷ and that the trustees of the said college and their successors for ever, may and shall be one body corporate and politic, in deed, action and name, and shall be called, and named and distinguished, by the name of THE TRUSTEES OF THE COLLEGE OF NEW JERSEY⁸ and further, we have willed, given, granted, constituted, and appointed, and by this our present charter, of our special grace, certain knowledge, and mere motion, we do, for us, our heirs and successors, will, give, grant, constitute, and ordain, that there shall, in the said college, from henceforth for ever, be a body politic, consisting of Trustees of the said College of New Jersey. And, for the more full and perfect erection of the said corporation and body politic consisting of Trustees of the College of New Jersey, we, of our special grace, certain knowledge, and mere motion, do, by these presents, for us, our heirs and successors, create, make, ordain, constitute, nominate, and appoint, the Governor and Commander in Chief of our said province of New Jersey, for the time being, and also our trusty and well-beloved John Reading, James Hude, Andrew Johnston, Thomas Leonard, John Kinsey, Edward Shippen and William Smith, Esquires, Peter VanBrugh Livingston, William Peartree Smith, and Samuel Hazard, gentlemen, John Pierson, Ebenezer Pemberton, Joseph Lamb, Gilbert Tennent, William Tennent, Richard Treat, Samuel Blair, David Cowell, Aaron Burr, Timothy Jones, Thomas Arthur, and Jacob Green, ministers of the gospel, to be Trustees of the said College of New Jersey.

*That the said Trustees do, at their first meeting, after the *receipt of these presents, and before they proceed to any business, take the oath appointed to be taken by an act, passed in *the first year of the reign of the late King George the First, *entitled, "An act for the further security of his Majesty's person *and government, and the succession of the crown in the heirs of *the late princess Sophia, being protestants, and for extinguishing

⁷Extended by the Act of March 11th, 1864.

⁸See foot-note 6, *supra*.

*the hopes of the pretended prince of Wales, and his open and *secret abettors"; as also that they make and subscribe the *declarations mentioned in an act of parliament, made in the *twenty-fifth year of the reign of King Charles the Second, *entitled, "An act for preventing dangers which may happen *from popish recusants"; and likewise take an oath for faithfully *executing the office or trust reposed in them, the said oaths to *be administered to them by three of his Majesty's justices of *the peace, *quorum unus*; and when any new member or officer *of this corporation is chosen, they are to take and subscribe the *aforementioned oaths and declarations before their admission *into their trusts or offices, the same to be administered to them *in the presence of the Trustees, by such person as they shall *appoint for that service.⁹

That no meeting of the Trustees shall be valid or legal for doing any business whatsoever, unless the clerk has duly and legally notified each and every member of the corporation of such meeting; and that before the entering on any business, the clerk shall certify such notification under his hand, to the Board of Trustees.

That the said Trustees have full power and authority or any *thirteen*¹⁰ or greater number of them, to elect, nominate, and appoint, and associate unto them, any number of persons as Trustees upon any vacancy, so that the whole number of Trustees exceed not *twenty-three*¹¹ whereof the President of the said college for the time being, to be chosen as hereafter mentioned, to be one, and twelve of the said Trustees to be always such persons as are inhabitants of our said province of New Jersey. And we do further, of our special grace, certain knowledge, and mere motion, for us, our heirs and successors, will, give, grant, and appoint, that the said Trustees and their successors shall, for ever hereafter, be in deed, fact and name, a body corporate and politic; and that they, the said body corporate and politic, shall be known and distinguished in all deeds, grants, bargains, sales, writings, evidences, muniments, or otherwise howsoever, and in all courts for ever hereafter, plead and be impleaded, by the name of THE TRUSTEES OF THE COLLEGE OF NEW JERSEY.¹²

And that they, the said corporation, by the name aforesaid,

⁹The entire clause relative to oaths repealed and supplied by Act of March 13th, 1780; and further amended by Act of March 29th, 1866.

Note.—The paragraphs that have been repealed are printed with STARS at the beginning of the lines. Single words, or clauses, that have been altered or repealed are printed in *italics*.

¹⁰Altered to *nine*, provided that the Governor of the State, or the President of the College, or the senior Trustee, be one of the nine; by the Act of Nov. 2d, 1781.

¹¹Altered to *twenty-seven* by the Act of April 6th, 1868.

¹²See foot-note 6, *supra*.

shall be able, and in law capable, for the use of the said college, to have, get, acquire, purchase, receive and possess lands, tenements, hereditaments, jurisdictions, and franchises, for themselves and their successors, in fee simple or otherwise howsoever; and to purchase, receive or build, any house or houses, or any other buildings, as they shall think needful or convenient for the use of the said College of New Jersey, and in such place or places in New Jersey, as they, the said Trustees shall agree upon, and also to receive and dispose of any goods, chattels, and other things of what nature soever, for the use aforesaid; and also to have, accept and receive, any rents, profits, annuities, gifts, legacies, donations and bequests, of any kind whatsoever, for the use aforesaid, so, nevertheless, that the yearly clear value of the premises do not exceed the sum of *two thousand pounds sterling*.¹³ And therewith or otherwise to support and pay, (as the said Trustees and their successors, or the major part of such of them as [according to the provision herein afterwards] are regularly convened for that purpose, shall agree and see cause,) the President, tutors, and other officers or ministers of the said college, their respective annual salaries or allowances, and all such other necessary and contingent charges as from time to time shall arise and accrue, relating to the said college; and also to grant, bargain, sell, let, set or assign, lands, tenements or hereditaments, goods or chattels, contract or do all other things whatsoever, by the name aforesaid, and for the use aforesaid, in as full and ample manner, to all intents and purposes, as any natural person or other body politic or corporate is able to do, by the laws of our realm of Great Britain, or of our said province of New Jersey.

And to our further grace, certain knowledge and mere motion, to the intent that our said corporation and body politic may answer the end of their erection and constitution, and may have perpetual succession and continue forever. WE do for us, our heirs and successors, hereby will, give, and grant, unto the said Trustees of the College of New Jersey, and to their successors forever, that when any *thirteen*¹⁴ of the said Trustees, or of their successors, are convened and met together as aforesaid, for the service of the said college, the Governor and Commander in Chief of our said province of New Jersey, and in his absence, the President of the said college, and in the absence of the said Governor and President, the eldest Trustee present at such meeting, from time to time, shall be President of the said Trustees in all their meetings: and at any time or times such

¹³Altered to *the value of twenty thousand bushels of wheat* by the Act of March 13, 1780; to *twenty thousand dollars*, May 27, 1799; to *one hundred thousand dollars*, March 11, 1864. Capacity to receive real and personal property is now unlimited. See Acts of April 8, 1903 and April 28, 1905.

¹⁴See foot-note 10, *supra*.

*thirteen*¹⁴ Trustees convened and met as aforesaid, shall be capable to act as fully and amply, to all intents and purposes, as if all the Trustees of the said college were personally present; provided always, that a majority of the said *thirteen*¹⁴ Trustees be of the said province of New Jersey, except after regular notice they fail of coming, in which case those that are present are hereby empowered to act, the different place of their abode notwithstanding; and all affairs and actions whatsoever, under the care of the said Trustees, shall be determined by the majority or greater number of those *thirteen*,¹⁴ so convened and met together, the President whereof shall have no more than a single vote.

And we do for us, our heirs and successors, hereby will, give and grant full power and authority, to any six or more of the said Trustees, to call meetings of the said Trustees, from time to time, and to order notice to the said Trustees of the times and places of meeting for the service aforesaid.

And also we do hereby for us, our heirs and successors, will, give and grant to the said Trustees of the College of New Jersey, and to their successors for ever, that the said Trustees do elect, nominate and appoint such a qualified person as they, or the major part of any *thirteen*¹⁴ of them convened for that purpose as above directed, shall think fit, to be the President of the said college, and to have the immediate care of the education and government of such students as shall be sent to, and admitted into the said college, for instruction and education; and also that the said Trustees do elect, nominate and appoint so many tutors and professors, to assist the President of the said College, in the education and government of the students belonging to it, as they, the said Trustees, or their successors, or the major part of any *thirteen*¹⁴ of them, which shall convene for that purpose as above directed, shall, from time to time, and at any time hereafter, think needful and serviceable to the interests of the said college; and also, that the said Trustees and their successors, or the major part of any *thirteen*¹⁴ of them, which shall convene for that purpose, as above directed, shall at any time displace and discharge from the service of the said college such President, tutors and professors, and to elect others in their room and stead; and also, that the said Trustees or their successors, or the major part of any *thirteen*¹⁴ of them, which shall convene for that purpose, as above directed, do from time to time, as occasion shall require, elect, constitute, and appoint a treasurer, a clerk, an usher, and a steward, for the said college, and appoint to them, and each of them, their respective business and trusts, and displace and discharge from the service of the said college such treasurer, clerk, usher, or steward, and to elect others in their room and stead; which President, tutors, pro-

fessors, treasurer, clerk, usher, and steward, so elected and appointed, we do for us, our heirs and successors, by these presents constitute and establish in their several offices, and do give them, and every of them, full power and authority to exercise the same in the said College of New Jersey, according to the direction, and during the pleasure of the said Trustees, as fully and freely as any other the like officers in our universities or any of our colleges in our realm of Great Britain, lawfully may and ought to do.

And also that the said Trustees, and their successors, or the major part of any *thirteen*¹⁴ of them, which shall convene for that purpose as above directed, as often as one or more of the said trustees shall happen to die, or by removal or otherwise shall become unfit or incapable, according to their judgment, to serve the interest of the said college, do, as soon as conveniently may be after the death, removal or such unfitness or incapacity of such Trustee or Trustees to serve the interest of the said college, elect and appoint such other Trustee or Trustees as shall supply the place of him or them so dying, or otherwise becoming unfit or incapable to serve the interest of the said college; and every Trustee so elected and appointed shall, by virtue of these presents, and of such election and appointment, be vested with all the power and privileges which any of the other Trustees of the said college are hereby invested with.

And we do further, of our special grace, certain knowledge and mere motion, will, give and grant, and by these presents do, for us, our heirs and successors, will, give and grant unto the said Trustees of the College of New Jersey, that they and their successors, or the major part of any *thirteen*¹⁴ of them, which shall convene for that purpose as above directed, may make, and they are hereby fully empowered from time to time, freely and lawfully to make and establish such ordinances, orders and laws, as may tend to the good and wholesome government of the said college, and all the students and the several officers and ministers thereof, and to the public benefit of the same, not repugnant to the laws and statutes of our realm of Great Britain, or of this our province of New Jersey, and not excluding any person of any religious denomination whatsoever from free and equal liberty and advantage of education, or from any of the liberties, privileges, or immunities of the said college, on account of his or their being of a religious profession different from the said Trustees of the said college; and such ordinances, orders, and laws, which shall be so as aforesaid made, we do, by these presents, for us, our heirs and successors, ratify, allow of, and confirm, as good and effectual, to oblige and bind all the said students and the several officers and ministers of the said college; and we do hereby authorize and empower the said

Trustees of the college, and the President, tutors, and professors, by them elected and appointed, to put such ordinances and laws in execution to all proper intents and purposes.

And we do further, of our especial grace, certain knowledge, and mere motion, will, give and grant unto the said Trustees of the College of New Jersey, that, for the encouragement of learning and animating the students of the said college to diligence, industry, and a laudable progress in literature, that they and their successors, or the major part of any *thirteen*¹⁴ of them, convened for that purpose as above directed, do, by the President of the said college for the time being, or by any other deputed by them, give and grant any such degree or degrees to any of the students of the said college, or to any others by them thought worthy thereof, as are usually granted in either of our universities or any other college in our realm of Great Britain;¹⁵ and that they do sign and seal diplomas or certificates of such graduations, to be kept by the graduates as perpetual memorials or testimonials thereof.

And further, of our special grace, certain knowledge, and mere motion, we do, by these presents, for us, our heirs and successors, give and grant unto the said Trustees of the College of New Jersey and to their successors, that they and their successors shall have a common Seal, under which they may pass all diplomas, certificates of degrees, and all other the affairs and business of and concerning the said corporation, or of and concerning the said College of New Jersey, which shall be engraven in such form and with such inscription as shall be devised by the said Trustees of the said college, or the major part of any *thirteen*¹⁶ of them, convened for the service of the said college as above directed.

And we do further, for us, our heirs and successors, give and grant unto the said Trustees of the College of New Jersey and their successors, or the major part of any *thirteen*¹⁶ of them, convened for the service of the college as above directed, full power and authority from time to time, to nominate and appoint all other inferior officers and ministers, which they shall think to be convenient and necessary for the use of the college, not herein particularly named or mentioned, and which are accustomed in our universities, or in any of our colleges in our realm of Great Britain, which officers or ministers we do hereby empower to execute their offices or trusts as fully and freely as any other the like officers or ministers, in and of our universities or any other college in our realm of Great Britain, lawfully may or ought to do.

¹⁵Extended by the Act of March 29, 1866.

¹⁶See foot-note 10, *supra*.

And lastly, our express will and pleasure is, and we do by these presents for us, our heirs and successors, give and grant unto the said Trustees of the College of New Jersey and to their successors for ever, that these our letters patent, or the enrolment thereof, shall be good and effectual in the law, to all intents and purposes, against us, our heirs and successors, without any other license, grant or confirmation from us, our heirs and successors, hereafter by the said Trustees to be had or obtained; notwithstanding the not reciting or misrecital, or not naming or misnaming of the aforesaid offices, franchises, privileges, immunities, or other the premises, or any of them: and notwithstanding a writ of *ad quod damnum* hath not issued forth to inquire of the premises or any of them, before the en-sealing hereof; any statute, act, ordinance or provision, or any other matter or thing to the contrary notwithstanding; to have, hold, and enjoy, all and singular the privileges, advantages, liberties, immunities, and all other the premises herein and hereby granted and given, or which are meant, mentioned, or intended to be herein and hereby given and granted, unto them the said Trustees of the said College of New Jersey and to their successors for ever.

IN TESTIMONY whereof we have caused these our letters to be made patent, and the Great Seal of our said province of New Jersey to be hereunto affixed. WITNESS our trusty and well-beloved JONATHAN BELCHER, Esquire, Governor and Commander in Chief of our said province of New Jersey, this fourteenth day of September, in the twenty-second year of our reign, and in the year of our Lord, one thousand seven hundred and forty-eight.

I have perused and considered the within Charter of incorporation, and find nothing contained therein inconsistent with his Majesty's interest or the honor of the Crown.

(Signed)

J. WARRELL, *Att. Gen'l.*

September the 13th, 1748.—This Charter, having been read in Council, was consented to and approved of.

(Signed)

CHAS. READ, *Cl. Con.*

Let the Great Seal of the Province of New Jersey be affixed to this charter.

(Signed)

J. BELCHER.

To the Secretary of the Province of New Jersey.

SYNOPSIS OF LAWS OF NEW JERSEY ESTABLISHING AND
AMENDING THE CHARTER¹⁷

1. Act of March 13, 1780, "An Act for amending and establishing the charter of the College of New Jersey, confirmed the charter of 1748, repealed the clause of that charter relating to oath of allegiance to the king, provided that each trustee take an oath prescribed by the state in which he resided, and provided that the trustees might hold for the institution property," the clear yearly value whereof shall not exceed the value of twenty thousand bushels of wheat.

2. Act of November 2, 1781, "A Supplemental Act to an Act entitled 'An Act for amending and establishing the Charter of the college of New Jersey'," reduced the number of trustees necessary for a quorum from thirteen to nine, providing that either the Governor, the President of the College or the eldest Trustee be one of the nine and provided that troops not be quartered in the college. This act was to continue in force for a period of five years.

3. Act of November 20, 1786, continued the act of 1781 in force.

4. Act of February 19, 1796, "An Act concerning the College of New Jersey," appropriated, "for three years successively, the sum of six hundred pounds, in quarterly-yearly payments, to the Trustees of the College of New Jersey, or their order . . ."

5. Act of May 27, 1799, "An Act relating to the College of New Jersey", reconfirmed the charter, with exceptions. This act annulled the clause respecting oaths that was contained in the charter of 1748, and reenacted in substance, the provision in regard to oaths that had been passed in 1780; reenacted the 1781 provision in regard to a quorum except that the term "senior" was substituted for "eldest" in regard to trustee; changed the limitation of value of estate to twenty thousand dollars; repealed the act of 1780 and the act of 1786.

6. Act of March 11, 1864, "An Act further to amend the Charter of the College of New Jersey, being a supplement to an act entitled, 'An act relative to the College of New Jersey'," specifically recognized and established the religious purpose of the college and changed the limitation of value of estate to one hundred thousand dollars. The statement in regard to the object of the college was as follows:

BE IT ENACTED BY THE SENATE AND GENERAL
ASSEMBLY OF THE STATE OF NEW JERSEY, That
the design and object of the said corporation is hereby de-

¹⁷The following references to and briefs of the amending statutes are, with the exception of those passed since 1920, based on the respective amendments and references as given in the bulletin published by Princeton University, 1920 (*Op. Cit.* pp. 23-41).

clared to be the promotion of religion and the advancement of learning, by the instruction of youth in religious truth, as well as in the learned languages, and in the liberal arts and sciences, and that the said corporation shall always be an institution for the purposes specified in this act.

7. Act of March 20, 1866, "A Further Supplement to the Charter of the College of New Jersey", specified anew that trustees must take oath, "faithfully and impartially to perform the duties of his office"; an oath to support the Constitution of the United States; and the oath of allegiance to the State in which he resides This act also granted the right to "confer any degrees granted by any other college or university" and repealed the section of the Act of 1799 that pertained to oaths of Trustees.

8. Act of April 6, 1868, "An Act further to amend the Charter of the College of New Jersey," authorized the Board of Trustees to increase the number of trustees to twenty-seven, "whenever the Board of Trustees by vote of two-thirds determine upon such increase."

9. Act of April 12, 1894, supplementing "An Act to Incorporate Societies for the Promotion of Learning," approved April 9, 1875, permitted such institutions to change their corporate names by a two-thirds vote of the board of trustees, and directed the filing of a certificate of change in the office of the county Clerk of Court and also in the office of the Secretary of State.

The Trustees of the College of New Jersey filed the change of corporate name to "The Trustees of Princeton University", February 13, 1896.

10. Act of February 18, 1901, "An Act to authorize Colleges and Universities to increase the number of their Trustees, and providing for the election of such additional Trustees", gave authority to Boards to increase their number provided two-thirds of those present at a regular meeting, or at a special meeting called for the purpose, favored the change.

By resolution of the Board of Trustees of Princeton University, adopted March 14, 1901, the election of five additional trustees was authorized.

11. Act of April 8, 1903, authorized corporations organized for religious, educational, charitable or benevolent purposes to acquire and hold such real and personal property as shall subserve their purposes or as they might acquire.

12. Act of April 8, 1905, authorized corporations organized for religious, educational, charitable or benevolent purposes to acquire, hold, dispose, act as trustee for, etc., of property.

13. Act of 1918, *Laws of New Jersey*, 1918, p. 849, exempted buildings and lands up to five acres, furniture and personal

property in said buildings, owned and used for educational and benevolent purposes, from taxation.

14. Act of 1925, *Laws of New Jersey*, 1925, p. 313, exempted property passing by devise or bequest to any educational institution for whose benefit there may have been or may hereafter be appropriations made by the legislature of this State, from inheritance tax.

JUDICIAL DECISIONS

Tax Exemption: Professors' Houses. Under the act of 1851 which exempts all colleges, academies, or seminaries of learning, and the lands whereupon the same are erected, the dwelling houses erected by the College of New Jersey for the accommodation of the professors and steward, are exempt from taxation. *State v. Ross, Collector of Princeton*, 4 Zabriskie (N.J.) 497 (1854).

Tax Exemption: Local Taxes. The taxes authorized to be levied by the charter of the borough of Princeton passed in 1822, and its supplement of 1847, are not affected by or subject to the exemptions in the General Tax Act of March 14, 1851, and the property of the College of New Jersey within the borough is not exempt from taxes assessed under the charter of the borough of Princeton. *State v. Robertson, Collector of Princeton*, 4 Zabriskie (N.J.) 504 (1854).

Exemption from California Inheritance Tax. Under the California Inheritance Tax Law of 1915 (California Statutes, 1915, page 421), which contains a broad exemption clause (Article I, section 7) for educational and charitable corporations, and is silent concerning the location of such institutions, Princeton University in New Jersey is exempt from the tax on its receipt of property under the will of a resident of California. Earlier decisions on this point in other states have generally held that foreign educational and charitable corporations are not within the exemptions provided in state inheritance tax acts; but there are other more recent decisions in accord with the present case. *In re Fiske's Estate: Chambers, Controller v. Princeton University*, 178 Cal. 116, 172 Pac. 390 (1918).

PURDUE UNIVERSITY

LAFAYETTE, INDIANA

A state institution founded in 1865 as a land-grant college under the terms of the Morrill Act. Named in honor of John Purdue, who, with other citizens of Tippecanoe County, donated \$200,000 and a hundred acres of land in 1869. The university now comprises the School of Agriculture, the School of Applied Science, the Schools of Engineering (Chemical, Civil, Electrical, Mechanical, and Applied Mechanics), the School of Home Economics, and the School of Pharmacy. There are independent departments of Physical Education for Men, Physical Education for Women, Military Science, and the Library. In addition there are the Graduate School, the Agricultural Experiment Station, the Department of Agricultural Extension, the Engineering Experiment Station, and the Department of Engineering Extension. Endowment, \$340,000. Total annual income in 1930, nearly \$5,000,000, of which \$2,211,000 was from the state of Indiana, and \$367,000 from the United States. The Schools of Engineering have a combined enrollment larger than that of any other engineering college in the United States.

LAWS RELATING TO PURDUE UNIVERSITY¹

PROVISIONS FROM THE STATUTES OF THE STATE OF INDIANA

EDUCATION, NORMAL SCHOOLS, COLLEGES AND UNIVERSITIES GENERAL PROVISIONS

(Acts 1865, p. 106. In force March 6, 1865)

7250. Agricultural College scrip.—1. The State of Indiana accepts and claims the benefits of the provisions of the acts of Congress, approved July 2, 1862, and April 14, 1864, and assents to all the conditions and provisions in said acts contained.

7251. The first trustees, and original name.—2. The governor of this state, for the time being and Alfred Pollard of Gibson, Smith Vawter of Jennings, Henry Taylor of Tippecanoe, and Lewis Burk of Wayne, and their successors, are created a body corporate, under the name of "the trustees of the Indiana Agricultural College."

7252. Sale and investment of scrip.—5. Said trustees shall, by the hand of their treasurer, claim and receive from the secretary of the interior the land scrip to which this state is entitled by the provisions of said acts of congress; and, under their direction, said treasurer shall sell the same, in such manner and at such times as shall be most advantageous to the state, and shall invest the proceeds thereof, and any interest that may accrue thereon, in the stocks of the United States or of this state yielding not less than five per cent per annum upon the par value of the stocks; and said principal and interest shall continue to be so invested, until further provision shall be made by the general assembly of this state for fulfilling the requirements of said acts of congress.

(Acts 1869, special session, p. 24. In force May 6, 1869)

7253. Donations accepted.—1. The donation offered by John Purdue, as set forth and communicated to the present general assembly in the message of the governor, on the sixteenth day of April, 1869, and the donations offered by the county of Tippecanoe, the trustees of the Battle-Ground Institute, and the trustees of the Battle-Ground Institute of the Methodist Episcopal Church, as set forth and communi-

¹From the *Bulletin of Purdue University*, Vol. XXVIII, No. 2, October, 1927, entitled The University Code, Part I.

cated to the general assembly, at its last session, in the message of the governor, of the twenty-seventh day of January, 1869, are hereby accepted by the State of Indiana.

7254. Location.—2. The college contemplated and provided by the act of congress, approved July 2, 1862, entitled "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," is hereby located in Tippecanoe County, at such point as may be determined before the first day of January, 1870, by a majority vote of the trustees of the Indiana Agricultural College; and the faith of the state is hereby pledged that the location so made shall be permanent.

7255. Purdue University—Permanent name.—3. In consideration of the said donation of John Purdue, amounting to one hundred and fifty thousand dollars, and of the further donation of one hundred acres of land appurtenant to the institution, and on condition that the same be made effectual, the said institution, from and after the date of its location as aforesaid, shall have the name and style of "Purdue University"; and the faith of the state is hereby pledged that said name and style shall be the permanent designation of said institution, without addition thereto or modification hereof.

7256. Corporate name—Powers and duties of trustees.—4. From and after the date of the location made as aforesaid, the corporate name of the trustees of the Indiana Agricultural College shall be "the trustees of Purdue University"; and they shall take in charge, have, hold, possess and manage, all and singular, the property and moneys comprehended in said donations, as also the fund derived from the sale of the land scrip donated under said acts of congress, and the increase thereof, and all moneys or other property which may hereafter at any time be donated to and for the use of said institution. They shall also have power to organize said university in conformity with the purposes set forth in said acts of congress, holding their meetings at such times and places as they may agree on, a majority of their number constituting a quorum. They shall provide a seal; have power to elect all professors and teachers, removable at their pleasure; fix and regulate compensations; do all acts necessary and expedient to put and keep said university in operation; and make all by-laws, rules and regulations required or proper to conduct and manage the same.

7257. Privileges of John Purdue.—5. In further consideration of his said donation, John Purdue shall, from and after the taking effect of this act, be added as member of said trustees of the Indiana Agricultural College, and he shall also be a member of said trustees of Purdue University. Should he, at any time, cease to be such member, he shall be continued as

an advisory member of said trustees; and he shall, during his life-time, have visitorial power, for the purpose of inspecting the property, real and personal, of said university, recommending to the trustees such measures as he may deem necessary for the good of the university, and investigating the financial concerns of the corporation. And he is authorized to make report of his examination, inspection and inquiries to the general assembly, at any session thereof.

7258. Amendment or repeal.—6. This act shall be subject to future amendment or repeal, except so far as it provides for the acceptance of donations, the location of the college, the name and style thereof, and the rights and privileges conferred upon John Purdue.

(Acts 1875, p. 120. In force March 9, 1875)

7259. Officers—Treasurer's bond and duties.—4. Said trustees shall, at their first meeting after their appointment, and every two years thereafter, choose a president of said board, and they shall, at such meeting and every two years thereafter, and whenever a vacancy occurs, elect, by ballot, a secretary and treasurer, neither of whom shall be a member of the board, whose compensation shall be fixed by said trustees. The said treasurer shall give bond to the State of Indiana in the sum of three hundred thousand dollars for the faithful execution of his trust, with sufficient sureties to the approbation of said trustees; and he shall receive, take charge of, and, under the direction of said trustees, manage all the stocks and funds belonging to said university.

(Acts 1921, p. 390. In force March 9, 1921)

7260. Trustees, number, term.—1. The board of trustees of Purdue University shall hereafter consist of nine members, to be appointed for such term of service and in such manner as is herein provided, and the members of such board now in office shall continue to serve until the first day of July, 1921, at which time their terms of office shall expire, and the terms of all future trustees shall terminate on the first day of July of the year in which their terms of office expire.²

7261. Appointment of new trustees.—2. On or before the first day of July, 1921, it shall be the duty of the governor of the State of Indiana to appoint nine trustees for Purdue University for the term beginning on the first day of July, 1921, which trustees and their successors shall be appointed as hereinafter provided.

7262. Trustees selected by alumni.—3. Three of the trustees so appointed shall be selected by the members of the Pur-

²Sections 6854, 6855 and 6856, Burns' R. S. 1914, were superseded by this act.

due alumni association, one of whom shall be a graduate of the school of agriculture, at the annual meeting of such association for the year 1920-1921, to be held prior to July 1, 1921, one of such trustees so selected shall serve for one year; one for two years and one for three years; all of such trustees so selected shall be members of the alumni association and graduates of Purdue University, and reside in the State of Indiana. The qualifications thus prescribed shall apply to all subsequent selections. At the annual meeting of the Purdue alumni association for the year in which the term of office of any one of the said alumni trustees expires, a successor shall be selected by the members of the Purdue alumni association, in such manner as such association may prescribe. The president of such association shall certify all selections so made by such Purdue alumni association and the respective terms of such persons so selected, and the persons so selected shall, by the governor, be appointed to serve for the respective periods for which such persons were so selected. If, at any time, a vacancy shall occur on the board of trustees, occasioned by the death, resignation, removal from the state, expiration of term, or otherwise, of any of the trustees selected by the members of the Purdue alumni association, such vacancy shall be filled by selection by the president of such alumni association, to serve until the next annual meeting of such alumni association, when a successor to fill out the unexpired term shall be selected as herein provided, and such person so selected shall be appointed by the governor to fill out such unexpired term.

7263. Trustees selected by governor.—4. Six of the trustees shall be appointed by the governor on or before the first day of July, 1921, one of whom shall be a woman, as follows: Two of such trustees shall be appointed to serve for a term of one year, two for a term of two years and two for a term of three years; two of the trustees so appointed shall be men of prominence and character in agricultural pursuits; two shall be men chiefly engaged in manufacturing industries; and two shall be citizens of character and distinction. All succeeding and subsequent trustees in this section provided shall be appointed from the respective classes as herein provided. All succeeding and subsequent trustees, whether selected by the Purdue alumni association or appointed by the governor, as in this section provided, shall serve for a period of three years. In case any vacancy occurs on the board of trustees, by reason of the resignation, removal from the state, expiration of term of office or otherwise, of any of the trustees appointed by the governor, as in this section provided, such vacancy shall be filled by the governor from the respective classes as herein provided, to serve only for such unexpired term.

7264. **Per diem and traveling expenses.**—5. The trustees of such university shall receive, when employed in actual service of the university, six dollars per diem, and ten cents per mile for traveling expenses.

7265. **Regulations as to attendance.**—6. The acceptance of an appointment by the governor shall signify that the appointee will give his best efforts to the interests of Purdue University and that he will regularly attend the meetings of the board of trustees. The secretary of said board of trustees shall report the attendance of each meeting of the board of trustees to the governor. If a member is absent for two consecutive meetings without sufficient excuse, it shall be considered sufficient cause for the governor to ask for the resignation of such member.

7266. **Acts of board legalized.**—7. All acts of the existing board of trustees of Purdue University and of all preceding boards of trustees, heretofore done and performed in the exercise of their duties, are hereby legalized.³

MISCELLANEOUS PROVISIONS

Among other acts of the Indiana Legislature affecting Purdue University are the following:

Acceptance of the Hatch Act in aid of the establishment of the Agricultural Experiment Station. Approved January 18, 1889.

Acceptance of the Adams Act providing for an increased annual appropriation for agricultural experiment stations. Approved March 12, 1907.

Acceptance of Smith-Lever funds for cooperative extension work. Approved March 8, 1915.

Acceptance of the Purnell Act for the more complete endowment of agricultural experiment stations. Approved March 7, 1925.

DORMITORIES

(Act Approved March 9, 1927)

SECTION 1. *Be it enacted by the general assembly of the State of Indiana*, That the trustees of Indiana university, the trustees of Purdue university and the board of trustees of the Indiana state normal school are hereby respectively authorized and empowered, from time to time, and as such trustees shall find a necessity therefor exists, to erect, construct, equip, furnish, operate, control and manage dormitories at or in connection with Indiana university, Purdue university, the Indiana state normal school at Terre Haute and the Indiana state normal school, Ball teachers' college, eastern division at Muncie, for

³Section 8 of the act repeals all laws in conflict.

the purposes of said respective institutions; and the said trustees are further respectively authorized and empowered to acquire, under this or any other law, now in force or hereafter enacted, by purchase, lease, condemnation, gift or otherwise, such property, real or personal, as, in the judgment of said respective trustees, shall be necessary for such purposes and the said trustees are further respectively authorized and empowered to use any real or personal property heretofore acquired by said trustees for such purposes. Title to all property so acquired, including the improvements thereon, shall be taken and held by and in the name of the said trustees in their corporate capacities for the purposes of this act.

SECTION 2. For the purpose of raising funds for the acquisition of such property and the erection, construction and completion of dormitories thereon, said trustees are further respectively authorized and empowered to issue and sell bonds of said institutions, which bonds, and the interest thereon may be secured by pledge or mortgage of any property, real or personal, used or acquired or to be acquired and used for dormitory purposes and the improvements made or to be made thereon, or by pledge or mortgage of the net income from said property, or by pledge or mortgage of said property and the net income therefrom, as said trustees may determine; and the lien of said pledge or mortgage, to the extent thereof, as determined and provided by said respective trustees, and as herein authorized, shall be a first and primary lien for the payment of said bonds and the interest thereon. Said bonds may be issued for such amount or amounts as said trustees shall determine, not however to exceed the total estimated cost of acquiring property for and erecting, constructing and completing and furnishing any proposed dormitory or dormitories as such respective trustees shall find such cost to be. Said bonds may be issued in such denominations and with such maturities and for such rate of interest as such respective trustees may fix and determine, and, in the discretion of said respective trustees, said bonds may be sold either privately or at public letting, but shall not be sold for less than the par value thereof. Said bonds and the pledge or mortgage securing the same, shall be issued and made in the name, and on behalf of such respective corporations by such officer or officers as said trustees shall respectively designate.

SECTION 3. No indebtedness, bond or obligation incurred or created under the authority of this act shall be or become a lien, charge or liability against the State of Indiana nor against the said respective corporations, nor against the property or funds of the state or said respective corporations, except to the extent of the property or income hereinabove authorized to be pledged or mortgaged.

SECTION 4. Said respective trustees may, in their discretion, furnish heat, light, power and other like facilities or service to any or all of said dormitories from the plant or plants or facilities of the respective institutions, with or without charge therefor.

SECTION 5. All property acquired under authority of this act, or used for the purposes herein provided, and all bonds issued under the authority hereinabove given, together with the interest thereon, shall be exempt from taxation.

SECTION 6. This act shall not be construed to repeal, modify or amend any law of this state now in force, but shall be deemed as supplemental thereto.

SECTION 7. Whereas an emergency exists for the immediate taking effect of this act, the same shall be in full force and effect from and after its passage.

JUDICIAL DECISIONS

Legality of Tippecanoe County Donation. On January 14, 1869, no board of commissioners of any county in the state had power to make a donation to secure the location of the agricultural college contemplated in the act of Congress of July 2, 1862, and the act of Indiana of March 6, 1865. But when an order was passed by the board of commissioners of Tippecanoe county on January 14, 1869, making an appropriation for that purpose, the order was not void, but was capable of being ratified by the legislature. It was so ratified by the act of May 6, 1869, accepting the donation and locating the college in Tippecanoe county. The act is not in violation of Article 4, Section 22 of the constitution of Indiana, regulating special or local legislation, nor of Article 10, Section 1, requiring the uniform and equal rate of assessment and taxation. *Marks v. Trustees of Purdue University*, 37 Ind. 155 (1871).

Fraternity Membership No Bar to Admission. The trustees and faculty of Purdue University, a public institution endowed by Congress and existing mainly by reason of state appropriation, and to which all inhabitants of the state of suitable age and character are entitled to admission, can not refuse admission to one otherwise entitled to it, because of his refusal to sign a pledge to disconnect himself from a Greek letter fraternity of which he is a member. Under such circumstances admission may be compelled by writ of mandamus. Although

the university is not a part of the public school system, it sustains relations to the people analogous to other public institutions in the state, and the general principles of the educational system of the state are applicable to its government and control. *State ex rel. Stallard v. White*, 82 Ind. 278, 42 Am. Rep. 496 (1882).

Legality of Appropriation to Agricultural Experiment Station. An appropriation to Purdue University for the exclusive use of the Agricultural Experiment Station does not contravene the constitutional prohibition of special grants to any citizen or class of citizens merely because it directs that a part of the money be expended for purposes agreed upon by the director of the Agricultural Experiment Station and an advisory committee of five persons, one each to be appointed by the Corn Growers' Association, the State Dairymen's Association, State Livestock Association, State Horticultural Society, and the State Poultry Fanciers' Association, all of which are private corporations representing classes of citizens. *Bullock v. Billheimer et al.*, 175 Ind. 428, 94 N.E. 763 (1911).

Eminent Domain. Purdue University is an educational institution belonging to the state of Indiana within the meaning of the Act of 1911 authorizing state institutions to exercise the right of eminent domain; and that right may be exercised by the trustees of the university. Provision of dormitories for the university is a public purpose for which the right of eminent domain may be exercised. *Russell v. Trustees of Purdue University*, 201 Ind. 367, 168 N.E. 529, 65 A.L.R. 1384 (1929).

The fact that Purdue University subsequently took possession of the condemned property under the terms of a lease, and paid rentals thereunder, did not amount to a waiver of the university's rights under the decree of condemnation, nor estop it from asserting those rights in the manner prescribed by law. *Russell v. Trustees of Purdue University*, 93 Ind. App. 242, 178 N.E. 180 (1931).

RENSSELAER POLYTECHNIC INSTITUTE

TROY, NEW YORK

A privately endowed school of engineering and science for men, with no denominational affiliation. Founded in 1824 by Stephen van Rensselaer. Endowment in 1930, \$5,800,000. Annual income, about \$800,000, of which more than half was from tuition fees.

LAWS RELATING TO RENSSELAER POLYTECHNIC INSTITUTE¹

ACTS OF THE LEGISLATURE OF THE STATE OF NEW YORK RELATING TO THE INSTITUTE

The Rensselaer School was established November 5, 1824. It was incorporated by an Act passed March 21, 1826, Chap. 83. The Act of April 26, 1832, Chap. 327, gave the Trustees power to remove to Greenbush if they wished. A law dated May 9, 1835, Chap. 254, differentiated the science from the engineering course and instead of A. B. (r. s.) the degrees B. N. S. and C. E. were in consequence, given. By the fourth Act passed May 8, 1837, Chap. 351, the name was changed to Rensselaer Institute. The office of Director was created and the Board of Trustees enlarged to 19 members by a law dated March 8, 1850, Chap. 49. By an act of July 10, 1851, Chap. 498, the State gave the Institute \$3,000. The Act of April 8, 1861, Chap. 151, confirmed the change of name to Rensselaer Polytechnic Institute, made ten years before, and gave the Board of Trustees power to increase its number to 25 members. To aid in rebuilding, after the fire of 1862, the State gave, April 23, 1863, Chap. 210, ten thousand dollars and April 23, 1864, Chap. 320, it gave a collection of fossils. Fifteen thousand dollars were given, May 8, 1868, Chap. 717, and \$3,750 by an Act passed April 28, 1871, Chap. 869. The Act of April 8, 1861, Chap. 151, as amended by Acts passed, March 26, 1866, Chap. 229, May 4, 1887, Chap. 277, and February 16, 1907, Chap. 14, constitutes the "Charter" of the school and is printed on following pages as the "Act of Incorporation." A special law passed April 22, 1898, Chap. 483, gave the Institute special powers regarding the admission of students. The text of this law follows that of the "Act of Incorporation."

ACT OF INCORPORATION OF THE RENSSELAER POLYTECHNIC INSTITUTE²

AN ACT to consolidate and amend the several acts relating to the Incorporation of the Rensselaer Institute.

Being chapter 151, Laws 1861, as amended by chapter 229, Laws 1866, chapter 277, Laws 1887, and chapter 14, Laws 1907.

¹*Act of Incorporation of Rensselaer Polytechnic Institute.* p. 4. Published by the Institute. (Corrected to March, 1925)

²*Ibid.* pp. 5-7.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The present trustees of Rensselaer Polytechnic Institute and their successors, are hereby constituted a body corporate and politic, by the name of "Rensselaer Polytechnic Institute." By that name they shall have perpetual succession, with power to fill vacancies as they may occur from time to time in their board, to sue and be sued, to complain and defend, to contract and be contracted with, to make and use a common seal, and to alter the same from time to time, at their pleasure; to purchase, take and hold, by gift, grant or otherwise, and to dispose of any real and personal property, and to borrow from time to time such sum or sums, as may be necessary to aid in maintaining this school, and to give proper and sufficient obligations for the same; provided that the funds of said corporation shall be used and appropriated to the object of maintaining a scientific and literary school in the county of Rensselaer. [As amended in 1907.]³

³The original act of incorporation, 1826, *Laws of New York*, Chap. 83, listed eight trustees, two of whom must reside in Albany, two in Troy, two in Lansingburgh and two in Waterford, and specified that all vacancies be filled by "a quorum of the remaining trustees", four members to constitute a quorum. The corporate name was "the president and trustees of Rensselaer School". The officers authorized in the act were: president, two vice-presidents, a treasurer and secretary, two professors, such number of adjunct professors and assistants as the trustees authorized, a librarian, monitor and steward.

An "annual meeting", on the last Wednesday in April, was specified and special meetings at the call of the president "at any time . . . provided a written notice of such meeting, signed by the president or by one of the vice-presidents, shall be left at the dwelling-house or place of residence of such member of the board seven days previous to such special meeting." This act limited the property holdings to that giving an annual income not in excess of twenty thousand dollars. *Laws of New York*, 1826, pp. 63-65.

An Act of May 9, 1835, empowered the trustees to "enact a by-law increasing the number of trustees by adding thereto the mayor and recorder of the city of Troy, and the alderman of the fourth ward of said city, who shall ever after be *ex officio* members of said board of trustees. (This act referred to the institution as the Rensselaer Institute, although the change of corporate name from "Rensselaer School" was not specifically made until the Act of May 8, 1837.) *Laws of New York*, 1835, Chap. 254, p. 296.

An Act of May 8, 1837, authorized the union of the "Troy academy" with the "Rensselaer Institute", the two to continue as separate branches, the former to be denominated "the department of classic literature" and the latter the "department of experimental science." Each was to operate according to "their respective laws and usages" but the formation of a "prudential board" consisting of six members, three appointed by each of the "department" boards, the mayor of the city of Troy to be *ex officio* a member of the "prudential board." This prudential board was vested with "the property and effects of both institutions" and was authorized to settle all matters of difference between the two "departments", to call meetings of all three boards and to effect settlements of disagreements through a joint "convention" of all three boards.

This act also made the "institute" subject to "the visitation of the regents of the university. . . ." *Laws of New York*, 1837, Chap. 351, pp. 382-83.

SECTION 2. Rensselaer Polytechnic Institute is hereby incorporated for the purpose of continuing and maintaining in the city of Troy and county of Rensselaer, a school for instruction in mathematics, civil engineering, chemistry, mineralogy, geology, botany, literature and the arts and their application to agriculture, domestic economy and manufacturing, as the trustees shall direct; and for the delivery of lectures on such subjects connected therewith as may be deemed necessary by said Board of Trustees.

SECTION 3. The Trustees shall hold an annual meeting on such day as may be prescribed by their by-laws, and such other meetings as may be called by the President of the Board; and a meeting shall be called at any time, at the written request of any three members of the Board. But no meeting shall be held unless notice shall have been sent by mail to, or left at, the dwelling house or place of residence of each member of the Board signed by the Secretary, or in case of his inability by the President or Vice-President. [As amended in 1866.]⁴

SECTION 4. No new Trustee shall be elected, nor shall any real estate be purchased or alienated unless at least ten members of the Board shall be present at the meeting. Seven members shall be a quorum for the transaction of any other business. The Board shall have power in its discretion to increase the number of Trustees, so as to make it consist of twenty-five members, including the Mayor of Troy. If any Trustee shall, for a continuous period of one year, fail to attend the meetings of the Trustees, without reasonable excuse, he may be removed from his office as Trustee at any meeting of the Trustees where there are not less than twelve Trustees present. [As amended in 1866.]⁵

SECTION 5. The Mayor of the city of Troy for the time being shall, *ex officio*, be a member of the Board.

An act of March 8, 1850, increased the board of trustees of the Rensselaer Institute to nineteen members, including the mayor of Troy, *ex officio*, and specified that no restriction as to place of residence of trustees should exist, and abolished all *ex officio* trustees except the mayor. The "annual" meeting was set for "at or near the close of each scholastic year, on such day as shall be fixed by said board", and a five-day notice of meetings was required. Seven members were required as "a quorum for the transaction of any business of the board, except the purchase, sale or other transfer of real estate, and the election of trustees, president, vice-president, director and professors in said Institute, for doing which a majority quorum of ten members shall be requisite." *Laws of New York*, 1850, Chap. 49, pp. 54-55.

The Act of April 8, 1861, limited property holdings to that, "the yearly income of which shall not exceed ten thousand dollars", and limited the amount that might be borrowed to ten thousand dollars. *Laws of New York*, 1861, Chap. 151, pp. 428-29.

⁴The Act of 1861, specified that notice of meeting be sent "at least three days previous to said meeting." *Ibid.* p. 429.

⁵The amendment of 1866 added the last sentences to the section. *Ibid.* p. 429.

SECTION 6. The Board of Trustees shall have power to appoint a President, Vice-President, Secretary and Treasurer, a Prudential Committee, a Director, and such other officers as they may deem necessary; to make such by-laws as they may deem proper for the election of their officers and for defining their duties, and for the regulation and government of the Institute, and the school connected therewith; to appoint professors and teachers in said school, and remove the same, including the Director, at their pleasure, and to prescribe the compensation to be allowed to each for his services; to organize the school under the charge of the instructors, and define their duties in the government and discipline of said school; to fix the amount of term fees and other charges for tuition; the amount of fines and other impositions, including damages for injury done by students to the property of the Institute; and to make such rules and regulations for the suspension or expulsion of students as may be necessary for maintaining the discipline of the school. [As amended in 1887.]⁶

SECTION 7. The Director and professors shall constitute the faculty of said school, and, subject to the by-laws, the Director shall have charge of the course of instruction and discipline in said school, and it shall be his duty to prescribe and pursue such a system of instruction as shall be calculated to make thorough scholars in the several branches of civil engineering and other studies of this Institute. [As amended in 1887.]⁷

SECTION 8. The Board of Trustees shall have power to confer the degrees of civil engineer, topographical engineer, bachelor of science and such other academical honors as they may see fit on such individuals as shall have pursued the course of study prescribed in the Institute, and shall have conformed to the rules and regulations for the government of the same, and who, in a thorough examination, shall have been found qualified for their respective degrees, and been recommended by the faculty for the same.

SECTION 9. The officers of the present Board of Trustees of Rensselaer Institute shall continue to hold their respective offices in Rensselaer Polytechnic Institute until others are appointed in their stead by the Board; and all by-laws and resolutions of the Board as now organized shall remain in full force, as the acts of the new Board until repealed, altered or amended

⁶Minor changes of wording to clarify original act. *Ibid.* pp. 429-30.

⁷Originally read, "The president of the board of trustees with the director and professors and teachers shall constitute the faculty of said school; and such faculty shall have charge under the direction of the trustees of the course of instruction and discipline in said school, and it shall be their duty to pursue such a system of instruction as shall be calculated to make thorough scholars in the several branches of civil engineering and other studies in this institute." *Ibid.* p. 430.

by the Board constituted under this act, and the present Director and professors and teachers shall be continued in office and pursue the present prescribed course of study and instruction, until otherwise ordered by the Board.

SECTION 10. All the real and personal estate of Rensselaer Institute shall belong to Rensselaer Polytechnic Institute; and all liabilities and obligations of the present Board shall be equally binding on the Board as organized by this act; and any suit in law now pending, commenced in the name of Rensselaer Institute, may be continued and conducted in the same name, and for the benefit of Rensselaer Polytechnic Institute, in the same manner as if the corporate name had not been changed by this act.

SECTION 11. Rensselaer Polytechnic Institute shall be subject to the visitation of the Regents of the University, and shall be entitled to the same privileges, government funds and other advantages as the academies, colleges, and other schools of the higher order, on complying with the terms required by law and the rules of said Regents.

SECTION 12. The corporation shall have all such powers, and be subject to such duties and liabilities as are specified or contained in the second and fifth articles of the first title of the fifteenth chapter; and in title third, chapter eighteen, of the first part of the revised statutes, except so far as the same are inconsistent with this act.

SECTION 13. All laws and parts of laws relating to the incorporation of the Rensselaer School, or Rensselaer Institute, inconsistent with this act are hereby repealed.

SECTION 14. This act shall take effect immediately.

SPECIAL ACT PASSED APRIL 22, 1898, CHAPTER 483

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Rensselaer Polytechnic Institute shall have exclusive power to regulate and prescribe the terms of admission of students to the courses of instruction prescribed from time to time to candidates for its degrees and on the satisfactory completion of such courses of study to confer degrees as authorized by chapter one hundred fifty-one of the laws of eighteen hundred and sixty-one, and the several laws amendatory thereof and to award suitable diplomas or certificates thereof.⁸

⁸*Op. Cit.* p. 8.

SPECIAL ACT WHICH BECAME A LAW
FEBRUARY 26, 1931

Laws of New York 1931, Chapter 34

AN ACT empowering Rensselaer Polytechnic Institute to confer honorary degrees.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Rensselaer Polytechnic Institute, a body corporate by virtue of chapter one hundred and fifty-one of the laws of eighteen hundred sixty-one and the acts amendatory thereof and supplemental thereto, shall have the power to confer honorary degrees and to award suitable diplomas or certificates thereof in conformity with the rules of the regents of the university of the state of New York.

SECTION 2. This act shall take effect immediately.

SMITH COLLEGE

NORTHAMPTON, MASSACHUSETTS

A privately endowed non-denominational college for women. Founded by Miss Sophia Smith who bequeathed \$400,000 for the purpose. Chartered in 1871. Endowment in 1930, \$6,260,000. Total annual income in excess of \$2,000,000, of which more than 80% was from student fees for room, board, tuition and other items.

CHARTER OF AND LAWS RELATING TO SMITH COLLEGE

AN ACT TO INCORPORATE THE SMITH COLLEGE¹

Be it enacted, etc., as follows:

SECTION 1. Charles E. Forbes and Osmyn Baker of Northampton, John M. Greene of Lowell, William S. Tyler and Julius H. Seelye of Amherst, William B. Washburn of Greenfield, Edwards A. Park of Andover, Joseph White of Williamstown, Birdseye G. Northrop of New Haven, Edward B. Gillett of Westfield, and George W. Hubbard of Hatfield, their associates and successors, are hereby constituted a body corporate, by the name of The Trustees of the Smith College, the leading object of which shall be the higher education of young women, in accordance with the plan and provisions prescribed in the last will of Sophia Smith, late of Hatfield. And for the orderly conducting of the business of said corporation, the said trustees shall have power and authority from time to time, as occasion may require, to elect a president, vice-president, secretary and treasurer, and such other officers of said corporation as may be found necessary, and to declare the duties of their respective offices and to elect new trustees; and to remove any trustee from the same corporation, when in their judgment he shall be rendered incapable, by age or otherwise, of discharging the duties of his office, or shall neglect or refuse to perform the same: *provided, nevertheless*, that the number of trustees shall never be greater than fifteen.

SECTION 2. The said corporation shall have full power and authority to determine at what times and places its meetings shall be held, and the manner of notifying the trustees to convene at such meetings; from time to time to elect a president of said college, and such professors, instructors, teachers and other officers of said college as they shall judge most for the interest thereof, and to determine the duties, salaries, emoluments, responsibilities and tenures of their several offices; and the said corporation is further empowered to purchase or erect, and keep in repair, such houses and other buildings as it shall judge necessary for the said college; to make and ordain, as occasion may require, reasonable rules, orders and by-laws, not repugnant to the constitution and laws of the Commonwealth, with reasonable penalties for the good government of the said college, and for the regulation of its own body;

¹ *Acts and Resolves of Massachusetts*, 1871, Chap. 71, pp. 475-77.

to determine and regulate the course of instruction in said college, and to grant such honorary testimonials and confer such honors, degrees and diplomas as are granted or conferred by any university, college or seminary of learning in the United States; and the diplomas so granted shall entitle the possessors to the immunities and privileges allowed by usage or statute to the possessors of like diplomas from any university, college or seminary of learning in this Commonwealth: *provided, nevertheless*, that no corporate business shall be transacted at any meeting unless a majority of the trustees are present.

SECTION 3. The said corporation may have a common seal, which it may alter or renew at its pleasure, and all deeds sealed with the seal of said corporation, (and signed by its order, shall when made in the corporate name, be considered in law as the deeds of the said corporation; and said corporation) may sue and be sued in all actions, real, personal or mixed, and may prosecute the same to final judgment and execution by the name of The Trustees of the Smith College; and said corporation shall be capable of taking and holding in fee simple or any less estate, by gift, grant, bequest, devise or otherwise, any lands, tenements or other estate, real or personal: *provided*, that the clear annual income of the same shall not exceed fifty thousand dollars.²

SECTION 4. The clear rents and profits of all the estate, real and personal, of which the said corporation shall be seized and possessed, shall be appropriated to the endowment of the said college in such manner as shall most effectually promote the

²Amended, March 10, 1891, to permit the holding of real and personal estate, the annual income of which was "not to exceed two hundred thousand dollars." *Acts and Resolves of Massachusetts*, 1891, Chap. 57, p. 695.

This section was again amended, February 25, 1914, to read as follows:

AN ACT TO AUTHORIZE THE TRUSTEES OF THE SMITH COLLEGE TO HOLD ADDITIONAL REAL AND PERSONAL ESTATE.

Be it enacted, etc., as follows:

Section three of chapter seventy-one of the acts of the year eighteen hundred and seventy-one, as amended by chapter fifty-seven of the acts of the year eighteen hundred and ninety-one, is hereby further amended by inserting after the word "holding", in the tenth line, the words:—in any amount,—and by striking out all after the word "personal", in the twelfth line, so as to read as follows:—

Section 3. The said corporation may have a common seal, which it may alter or renew at its pleasure, and all deeds sealed with the seal of said corporation and signed by its order shall, when made in the corporate name, be considered in law as the deeds of the said corporation; and said corporation may sue and be sued in all actions, real, personal or mixed, and may prosecute the same to final judgment and execution by the name of The Trustees of the Smith College; and said corporation shall be capable of taking and holding in any amount in fee simple or any less estate, by gift, grant, bequest, devise or otherwise, any lands, tenements or other estate, real or personal. *Acts and Resolves of Massachusetts*, 1914, Chap. 110, p. 79.

high standard of education and culture aimed at by the founder, the said trustees conforming to the will of the founder, and of any donor or donors in the application of any estate which has been or may be given, devised or bequeathed for any object connected with the college.

SECTION 5. The board of trustees, when organized, are authorized and required to locate the said college in Northampton, provided the citizens or town of Northampton, within two years from December fifth, in the year eighteen hundred and seventy, shall raise and pay over, or cause to be raised and paid over to the said board of trustees, if organized, or if not, to the two trustees named in the fifth section of the founder's will, or to their proper successors, the sum of twenty-five thousand dollars for the purposes specified in said will. And upon the failure or refusal of the citizens or town of Northampton so to do, then the said trustees, when organized, shall locate the said college in Hatfield, and in whichever town located, the said trustees are authorized to select therein a suitable site therefor, and to purchase or otherwise acquire and hold all such real estate as in the judgment of said trustees may be required for the buildings and grounds connected with said college.³

SECTION 6. The legislature may grant any further powers to, or alter, limit, annul or restrain any of the powers vested by this act in the said corporation, as shall be found necessary to promote the best interests of the said college.

SECTION 7. This act shall take effect upon its passage.

Approved March 3, 1871.

³An act of May 24, 1922, authorized the sale of land belonging to the "Northampton state hospital" to Smith College. *Acts and Resolves of Massachusetts, 1922*, Chap. 467, pp. 539-40.

STANFORD UNIVERSITY

PALO ALTO, CALIFORNIA

A privately controlled co-educational university. Founded in 1885 by Leland Stanford and Jane Lathrop Stanford as a memorial to their son, Leland Stanford, Jr. Comprises a School of Biological Sciences, a Graduate School of Business, a School of Education, a School of Engineering, a School of Hygiene and Physical Education for Men, a School of Law, a School of Letters, a School of Medicine, a School of Physical Sciences, and a School of Social Sciences. In 1931 the endowment was \$30,000,000, and the total budget income, \$2,995,000.

LAWS RELATING TO STANFORD UNIVERSITY¹

CONSTITUTIONAL PROVISIONS

Amendment adopted November 6, 1900

ARTICLE IX

SECTION 10. The trusts and estates created for the founding endowment, and maintenance of the Leland Stanford Junior University, under and in accordance with "An act to advance learning, etc.," approved March ninth, eighteen hundred and eighty-five, by the endowment grant executed by Leland Stanford and Jane Lathrop Stanford on the eleventh day of November, A. D., eighteen hundred and eighty-five, and recorded in liber eighty-three of deeds, at page twenty-three, *et seq.*, records of Santa Clara County, and by the amendments of such grant, and by gifts, grants, bequests, and devises supplementary thereto, and by confirmatory grants, are permitted, approved, and confirmed. The Board of Trustees of the Leland Stanford Junior University, as such, or in the name of the institution, or by other intelligible designation of the Trustees or of the institution, may receive property, real or personal, and wherever situated, by gift, grant, devise, or bequest, for the benefit of the institution, or of any department thereof, and such property, unless otherwise provided, shall be held by the Trustees of the Leland Stanford Junior University upon the trusts provided for in the grant founding the university, and amendments thereof, and grants, bequests, and devises supplementary thereto. The Legislature, by special act, may grant to the Trustees of the Leland Stanford Junior University corporate powers and privileges, but it shall not thereby alter their tenure, or limit their powers or obligations as trustees. All property now or hereafter held in trust for the founding, maintenance, or benefit of the Leland Stanford Junior University, or of any department thereof, may be exempted by special act from the state taxation, and all personal property so held, the Palo Alto farm as described in the endowment grant to the Trustees of the university, and all other real property so held and used by the university for educational purposes exclusively, may be similarly exempted from county and municipal taxation; provided, that residents of California shall be charged no fees for tuition unless such fees be authorized by act of the Legislature.

¹*Trustees' Manual*, Fourth Edition, pp. 9-78. Published by Stanford University, 1928.

New section adopted November 3, 1914

SECTION 1a. Constitution, state of California:

Any educational institution of collegiate grade, within the state of California, not conducted for profit, shall hold exempt from taxation its buildings and equipment, its grounds within which its buildings are located, not exceeding one hundred acres in area, its securities and income used exclusively for the purposes of education.

STATUTORY PROVISIONS

THE ENABLING ACT²

The people of the state of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The provisions of this Act shall be liberally construed with a view to effect its objects and promote its purposes; and in the construction thereof the singular number shall be deemed to include the plural, and the plural shall be deemed to include the singular number, and the masculine gender shall be deemed to include the feminine.

SECTION 2. Any person desiring, in his lifetime, to promote the public welfare by founding, endowing, and having maintained, within this state, a university, college, school, seminary of learning, mechanical institute, museum, or gallery of art, or any or all thereof, may, to that end, and for such purpose, by grant in writing, convey to a Trustee, or to any number of Trustees named in such grant (and to their successors), any property, real or personal, belonging to such person, and situated or being within this state, provided, that if any such person be married and the property be community property, then both husband and wife must join in such grant.

SECTION 3. The person making such grant may therein designate:

1. The nature, object, and purposes of the institution or institutions to be founded, endowed, and maintained.

2. The name by which it or they shall be known.

3. The powers and duties of the Trustees, and the manner in which they shall account, and to whom, if accounting be required; but such powers and duties shall not be held to be exclusive of other powers and duties which may be necessary to enable such Trustees to fully carry out the objects of such grant.

4. The mode and manner, and by whom, the successors to the Trustee or Trustees named in the grant are to be appointed.

²Approved March 9, 1885. Statutes, 1885, p. 49.

5. Such rules and regulations for the management of the property conveyed as the grantor may elect to prescribe; but such rules shall, unless the grantor otherwise prescribe, be deemed advisory only, and shall not preclude such Trustees from making such changes as new conditions may from time to time require.

6. The place or places where, and the time when, the buildings necessary and proper for the institution or institutions shall be erected, and the character and extent thereof. The person making such grant may therein provide for all other things necessary and proper to carry out the purpose thereof, and especially may such person provide for the trades and professions which shall be taught in such institutions, and the terms upon which deserving scholars of the public and private schools of the various counties of this state may be admitted to all the privileges of such institutions, as a reward for meritorious conduct and good scholarship; and also for maintaining free scholarships for children of persons who have rendered service to or who have died in the service of this state; and also for maintaining free scholarships for children of mechanics, tradesmen, and laborers, who have died without leaving means sufficient to give such children a practical education, fitting them for the useful trades or arts; and also the terms and conditions upon which students in the public and private schools, and other deserving persons, may, without cost to themselves, attend the lectures of any university established; and also the terms and conditions upon which the museums, and art galleries, and conservatories of music connected with such any institution, shall be open to all deserving persons, without charge, and without their becoming students of the institution.

SECTION 4. The Trustee or Trustees named in such grant, and their successors, may, in the name of the institution or institutions, as designated in such grant, sue and defend, in relation to the trust property, and in relation to all matters affecting the institution or institutions endowed and established by such grant.

SECTION 5. The person making such grant, by a provision therein, may elect, in relation to the property conveyed and in relation to the erection, maintenance, and management of such institution or institutions, to perform, during his life, all the duties and exercise all the powers which, by the terms of the grant, are enjoined upon and vested in the Trustee or Trustees therein named. If the person making such grant, and making the election aforesaid, be a married person, such person may further provide that if the wife of such person survive him, then such wife, during her life, may, in relation to the property conveyed, and in relation to the erection, maintenance, and man-

agement of such institution or institutions, perform all the duties and exercise all the powers which, by the terms of the grant, are enjoined upon and vested in the Trustee or Trustees therein named, and in all such cases the powers and duties conferred and imposed by such grant upon the Trustee or Trustees therein named, shall be exercised and performed by the person making such grant, or by his wife during his or her life, as the case may be; provided, however, that upon the death of such person, or his surviving wife, as the case may be, such powers and duties shall devolve upon and shall be exercised by the Trustees named in the grant and their successors.

SECTION 6. The person making such grant may therein reserve the right to alter, amend, or modify the terms and conditions thereof and the trusts therein created, in respect to any of the matters mentioned or referred to in subdivisions one to six inclusive, of section two [three] hereof; and may also therein reserve the right, during the life of such person or persons, of absolute dominion over the personal property conveyed, and also over the rents, issues, and profits of the real property conveyed, without liability to account therefor in any manner whatever and without any liability over against the estate of such person; and if any such person be married, such person may, in said grant, further provide that if his wife survive him, then such wife, during her life, may have the same absolute dominion over such personal property, and such rents, issues, and profits, without liability to account therefor in any manner whatever, and without liability over against the estate of either of the spouses.

SECTION 7. The person making such grant may therein provide that the Trustees named in the grant, and their successors, may in the name of the institution or institutions, become the custodian of the persons of minors, and when any such provision is made in a grant, the Trustees and their successors may take such custody and control in the manner and for the time, and in accordance with the provisions of sections two hundred and sixty-four to two hundred and seventy-six, inclusive, of the Civil Code of the state of California.

SECTION 8. Any such grant may be executed, acknowledged, and recorded in the same manner as is now provided by law for the execution, acknowledgment, and recording of grants of real property.

SECTION 9. No suit, or proceeding shall be commenced or maintained by any person to set aside, annul, or affect said conveyance, or to affect the title to the property conveyed, or the right to the possession, or to the rents, issues, and profits thereof, unless the same be commenced within two years after

the date of filing such grant for record; nor shall any defense be made to any suit, action, or proceedings commenced by the Trustee or Trustees named in said grant, or their successors, privies, or persons holding under them, which defense involves the legality of said grant, or affects the title to the property thereby conveyed, or the right to the possession, or the rents, issues, and profits thereof, unless such defense is made in a suit, action, or proceeding commenced within two years after such grant shall have been filed for record.

SECTION 10. The property conveyed by such grant shall not, after the lapse of two years from the date of the filing for record of the grant, be subject to forced sale under execution, or judicial proceedings of any kind, against the grantor or his privies, unless the action under which the execution shall be issued, or the proceedings under which the sale shall be ordered, shall have been commenced within two years after such grant shall have been filed for record. Nor shall such property be subject to execution or forced sale under any judgment obtained in any proceedings instituted within said two years, if there be other property of the grantor subject to execution or forced sale sufficient to satisfy such judgment, provided, nothing in this section contained shall be construed to affect mechanics' or laborers' liens.

SECTION 11. Any person or persons making any such grant may, at any time thereafter, by last will or testament, devise and bequeath to the state of California all or any of the property, real and personal, mentioned in such grant, or in any supplemental grant, and such devise or bequest shall only take effect in case, from any cause whatever, the grant shall be annulled, or set aside, or the trusts therein declared shall for any reason fail. Such devise and bequest is hereby permitted to be made by way of assurance that the wishes of the grantor or grantors shall be carried out, and in the faith that the state, in case it succeeds to the property, or any part thereof, will, to the extent and value of such property, carry out, in respect to the objects and purposes of any such grant, all the wishes and intentions of the grantor or grantors; provided, that no wish, direction, act, or condition expressed, made, or given by any grantor or grantors, under or by virtue of this act, as to religious instruction to be given in such school, college, seminary, mechanical institute, museum, or gallery of art, or in respect to the exercise of religious belief, on the part of any pupil or pupils of such school or institution of learning, shall be binding upon the state; nor shall the state enforce, or permit to be enforced or carried out, any such wish, direction, act, or condition.

SECTION 12. This act shall be in force from and after its passage.

ACT CONFERRING CORPORATE POWERS³

The people of the state of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Trustees of the Leland Stanford Junior University are given the right to exercise corporate powers and privileges, and to that end they may organize and act as a Board of Trustees, elect such officers of such board as they may deem to be necessary, adopt by-laws, and as such board, and through the officers thereof, they may transact such business, perform such acts, and exercise such powers as they in writing may provide may be transacted, performed, and exercised by such board.

Such board may adopt a seal which shall read, "Seal of the Leland Stanford Junior University," and such seal, when attached to any document or writing, shall be prima facie evidence that such document or writing was made by and under due authority from such board and from such trustees.

Nothing herein shall be deemed to alter the tenure or limit the powers or obligations of such trustees.

SECTION 2. This act shall take effect from its passage.

GRANT FOUNDING AND ENDOWING THE LELAND
STANFORD JUNIOR UNIVERSITY

November 11, 1885

We, LELAND STANFORD and JANE LATHROP STANFORD, husband and wife, grantors, desiring to promote the public welfare by founding, endowing, and having maintained upon our estate known as the Palo Alto Farm, and situated in the Counties of San Mateo and Santa Clara, State of California, United States of America, a University for both sexes, with the Colleges, Schools, Seminaries of Learning, Mechanical Institutes, Museums, Galleries of Art, and all other things necessary and appropriate to a University of high degree, to that end, and for that purpose, do hereby grant, bargain, sell, and convey to Lorenzo Sawyer, H. W. Harkness, James McM. Shafter, Josiah Stanford, Charles Goodall, Horace Davis, Alfred L. Tubbs, John F. Miller, Francis E. Spencer, John Boggs, Henry Vrooman, T. B. McFarland, Charles F. Crocker, Isaac S. Belcher, Timothy Hopkins, John Q. Brown, Henry L. Dodge, George E. Gray, Irving M. Scott, N. W. Spaulding, William Ashburner of California, Matthew P. Deady of Oregon, William M. Stewart of Nevada, and Stephen J. Field, a Justice of the Supreme Court of the United States, Trustees, and to their successors forever, all and singular, the following described property:

³Approved February 14, 1901. Statutes 1901, p. 4.

That certain tract of land, situate in the County of Butte, State of California, and now commonly known and designated as Stanford's Gridley Farm.

Also that certain tract of land situated partly in the said County of Butte, and partly in the County of Tehama, in said state, and now commonly known and designated as Stanford's Vina Farm.

And also that certain tract of land situated partly in the County of Santa Clara and partly in the County of San Mateo, and now commonly known and designated as the Palo Alto Farm.

Together with all the tenements, hereditaments, and appurtenances thereunto belonging, with the water rights, water ditches, pipes, flumes, canals, aqueducts, and reservoirs now used in connection with either of said tracts of land: said tracts of land being more particularly described by metes and bounds in the paper hereto attached, marked "Schedule A" and made part hereof.

To have and to hold said property, and all other property, real and personal, which we, or either of us, may hereafter convey or devise to them or their successors upon the trust that it shall constitute the foundation and endowment for the University herein provided, and upon the trust that the principal thereof shall forever remain intact, and that the rents, issues, and profits thereof shall be devoted to the foundation and maintenance of the University hereby founded and endowed, and to the uses and purposes herein mentioned.

Now, there, further in pursuance of said desire, and that the trust hereby created may be executed according to the wishes of the grantors and each of them, they do hereby, as it is provided may be done by the Act of the Legislature of the State of California, approved March 9, 1885, entitled "An act to advance learning, the arts and sciences, and to promote the public welfare, by providing for the conveyance, holding, and protection of property, and the creation of trusts for the founding, endowment, erection, and maintenance within this state of universities, colleges, schools, seminaries of learning, mechanical institutes, museums, and galleries of art," designate:

First, the Nature, Object, and Purposes of the Institution Hereby Founded, to Be:

Its nature, that of a university with such seminaries of learning as shall make it of the highest grade, including mechanical institutes, museums, galleries of art, laboratories, and conservatories, together with all things necessary for the study of agriculture in all its branches, and for mechanical training, and the studies and exercises directed to the cultivation and enlargement of the mind;

Its object, to qualify its students for personal success, and direct usefulness in life;

And its purposes, to promote the public welfare by exercising an influence in behalf of humanity and civilization, teaching the blessings of liberty regulated by law, and inculcating love and reverence for the great principles of government as derived from the inalienable rights of man to life, liberty, and the pursuit of happiness.

Second, the Name of the Institution:

Since the idea of establishing an institution of this kind for the benefit of mankind came directly and largely from our son and only child LELAND, and in the belief that had he been spared to advise us as to the disposition of our estate he would have desired the devotion of a large portion thereof to this purpose, we will that for all time to come the institution hereby founded shall bear his name, and shall be known as

THE LELAND STANFORD JUNIOR UNIVERSITY.

Third, the Number, Quorum, and Designation of the Trustees:

The number of the Trustees shall be twenty-four, and fifteen thereof shall constitute a quorum, but the assent of not less than a majority of the whole, to wit, thirteen, shall be necessary for affirmative action in the execution of the trusts herein contained.

The Trustees herein named and their successors, in their collective capacity, shall be known and designated as "The Board of Trustees of the Leland Stanford Junior University."

Fourth:

That the Trustees (subject to the reservations and to the rights to alter and amend hereinafter contained) shall have power, and it shall be their duty:

1. To meet in the City of San Francisco on the fourteenth day of November, 1885, or as soon thereafter as practicable, and then and there, a majority of their number being present, to organize as a Board by electing one of their number Chairman, and to transact such other business as may be proper.

2. To manage and control the institution hereby founded.

3. To manage and control the trust property, care for and improve the same, operate or lease it, and apply the net proceeds or profits thereof to the purposes of the trust hereby created.

4. To, in their discretion, receive grants of property from others in aid of the Institution founded, or to establish Scholarships therein—providing the same are made upon terms and conditions in harmony with the purposes of the Institution as herein declared.

5. To receive from the grantors, or either of them, by grant or devise, such other property as the grantors or either of them may hereafter elect to give, and to hold such property upon the same conditions, and to the same uses and trusts, as are herein prescribed.

6. To make By-Laws not inconsistent with the laws of this State, or the purposes of this grant, for the government of the Institution hereby founded.

7. To make rules and regulations for the management of the trust property.

8. To keep a full and fair record of their proceedings.

9. To appoint a President of the University, who shall not be one of their number, and to remove him at will.

10. To employ professors and teachers at the University.

11. To fix the salaries of the President, professors, and teachers, and to fix them at such rates as will secure to the University the services of men of the very highest attainments.

12. To use the rents, issues, and profits of the trust property (but no part of the principal) in the execution of their trust, and in case such rents, issues, and profits, for any one year, exceed the amount necessary to execute the trust, and maintain the Institution for said year, then to invest the same until its use becomes necessary.

13. To establish and maintain at such University an educational system which will, if followed, fit the graduate for some useful pursuit, and to this end to cause the pupils, as early as may be, to declare the particular calling, which in life they may desire to pursue; but such declaration shall not be binding if, in the judgment of the President of the University, the student is not by nature fitted for the pursuit declared.

14. To prohibit sectarian instruction, but to have taught in the University the immortality of the soul, the existence of an all-wise and benevolent Creator, and that obedience to His laws is the highest duty of man.

15. To have taught in the University the right and advantages of association and co-operation.

16. To afford equal facilities and give equal advantages in the University to both the sexes.

17. To maintain on the Palo Alto Estate a farm for instruction in Agriculture in all its branches.

18. To do and perform all things hereinafter provided for, and all things necessary to the proper exercise and discharge of their trust.

Fifth, the Powers and Duties of the President of the University:

It shall be the duty of the Trustees to give to the President of the University the following powers:

1. To prescribe the duties of the professors and teachers.
2. To remove professors and teachers at will.
3. To prescribe and enforce the course of study and the mode and manner of teaching.
4. Such other powers as will enable him to control the educational part of the University to such an extent that he may justly be held responsible for the course of study therein and for the good conduct and capacity of the professors and teachers.

Sixth, the Faculty:

The Trustees shall constitute the President and professors the faculty of the University and prescribe their powers and duties as such.

Seventh, the Manner, and to Whom, the Trustees Shall Report:

The Board of Trustees shall annually report all their proceedings to the person who for the time being shall fill the office of Governor of the State of California, and shall accompany such report with a full account of their financial operations for the preceding year, and with a statement of the financial affairs of the Institution.

Eighth, the Mode and Manner, and by Whom, the Successors to the Trustees Named in the Grant Are to Be Appointed:

Any Trustee named in this Grant, or the successor to any such Trustee, may for good cause be removed by a proper court of equity jurisdiction, after notice to him, and upon the application of the grantors herein, or either of them, or upon the application of the Board of Trustees.

Any Trustee named in this Grant, or the successor of any such Trustee, may, in writing, addressed and delivered to the Board of Trustees, resign his office as Trustee, and every vacancy in the Trustees which shall occur during the lives of the grantors, or during the life of either of them, either from the failure of any Trustee named in this Grant to accept the trust, or from death, resignation, or otherwise, shall be filled by the grantors, or either of them, as the case may be, and every vacancy occurring thereafter shall be filled by the surviving or remaining Trustees by ballot.

Ninth, the Place Where, and the Time When, the Buildings Necessary and Proper for the Institution Shall Be Erected, the Character and Extent Thereof:

The Trustees shall:

1. Within two years from the date hereof, select and lay off on the Palo Alto Farm a site, and adopt a general plan for the construction of the University buildings. Such buildings shall be plain and substantial in character and extensive enough to

provide accommodations for the University and the Colleges, Schools, Seminaries, Mechanical Institutes, Museums, Laboratories, Conservatories, and Galleries of Art, part thereof. They shall be built as needed, and no faster, and in a manner which shall allow for additions and expansions from time to time, as the necessities of the University may demand, the Trustees bearing in mind that extensive and expensive buildings do not make a University; that it depends for its success rather upon the character and attainments of its Faculty. In this behalf, and to the end that the endowment may not be wasted, or impaired, by the premature construction of expensive buildings, the Trustees shall be the exclusive judges, free from all interference from any source whatever, of the time when buildings are needed, and of the time and manner of their construction, and of the time and manner of making additions thereto.

2. Lay off on the Palo Alto Farm one or more sites for buildings for the officers and employees of the Institution, and erect and maintain thereon such buildings as may be necessary.

3. Lay off on the Palo Alto Farm one or more sites for dwelling-houses for parents or guardians and their families, and for such other persons as the Board may direct, and erect thereon buildings, and lease the same, or lease the land and permit the lessees to erect such buildings, on such terms and conditions as the Board may direct.

4. Lay off on said Palo Alto Farm a lot of about ten acres, and suitably improve and maintain the same forever as a place of burial and of last rest on earth for the bodies of the grantors and of their son LELAND STANFORD JUNIOR, and as the Board may direct, for the bodies of such other persons who may have been connected with the University.

5. Lay off on the Palo Alto Farm a site for, and erect thereon, a church.

Tenth, the Scholarships and Other Matters Connected Therewith:

The Trustees shall have power, and it shall be their duty:

1. To establish and maintain in connection with the University such a number of free scholarships as the endowment of the Institution, considering all its objects, will justify. Such scholarships must be given either to those who, by good conduct and study, have earned the right thereto, or to the deserving children of those who, dying without means in the service of the State, or in the cause of humanity, have a special claim upon the good will of mankind.

2. To fix the terms and conditions upon which the students generally may be admitted to all or any of the privileges of the University.

3. To fix the terms and conditions upon which the students of the public and private schools and other deserving persons may attend the lectures of the University, or engage in original research thereat, and the terms and conditions upon which the agricultural farms, laboratories, museums, art galleries, mechanical institutes, conservatories, and other institutions, part of the University, shall be open to deserving persons, without their becoming students thereof.

4. To establish and have given at the University, by its ablest professors, courses of lectures upon the Science of Government, and upon Law, Medicine, Mechanics, and the other Arts, and Sciences, which shall be free to the postgraduates of the Colleges of the University hereby founded, and to the postgraduates of all other colleges and universities, and to all deserving persons, to the full capacity of the lecture-rooms, under such rules and regulations as the Trustees may adopt.

Eleventh, Election of the Grantors to Control the Property and the Execution of the Trust During Their Lives, or the Life of Either:

The grantors, and each of them, do hereby, in accordance with the provisions of the aforesaid Act of the Legislature, elect:

1. In relation to the property hereby conveyed, and in relation to such other property as may hereafter be conveyed or devised by them or either of them to said Trustees for the purpose of this trust, and in relation to the erection, maintenance, and management of the Institution hereby founded, to perform during their lives all the duties and exercise all the powers and privileges, which, by the terms of this Grant, are enjoined upon and vested in the Trustees therein named.

2. That the survivor of either of said grantors shall, after the death of the other, and during the life of the survivor, in relation to all of said property, and in relation to the erection, maintenance, and management of the Institution hereby founded, perform all the duties, and exercise all the powers and privileges which, by the terms of this Grant are enjoined upon and vested in the Trustees therein named.

3. That upon the death of both grantors then all such duties shall devolve upon and all such powers and privileges shall be exercised by the Trustees named in this Grant, and by their successors forever.

Twelfth, Reservation of the Right to Alter, Amend, or Modify the Terms and Conditions of This Grant, and the Trust Therein Created, in Certain Respects:

The grantors hereby reserve to themselves during their lives, and hereby reserve and grant to the one who shall survive the other, during his or her life, the right to alter, amend, or modify the terms and conditions of this Grant, and the trusts therein

created, in respect to the nature, object, and purposes of the Institution founded, the powers and duties of the Trustees, the manner in which, and to whom, they shall account, the mode and manner, and by whom, their successors shall be appointed, the rules and regulations for the management of the property conveyed, the time when, and the character and extent of, the buildings which shall be erected, the right to provide for trades and professions which shall be taught in the Institution, and the terms upon which Scholarships shall be founded.

Thirteenth, Reservation of Other Rights:

The grantors hereby reserve to themselves during their lives, and here reserve and grant to the one who shall survive the other, during his or her life:

1. The right to absolute dominion over the personal property which they, or either of them, may hereafter give to said Trustees, or their successors, and over the rents, issues, and profits thereof.

2. The right to absolute dominion over the rents, issues, and profits of the real property hereby granted.

3. The right to improve, manage, and control the trust property, as if this Grant had not been made; but this reservation does not include the right or power to sell or encumber any of the real property granted.

All these rights, and all other rights reserved by, and all powers and privileges given, or duties imposed upon, the grantors, or either of them, by the terms of this Grant, shall be exercised, enjoyed, and performed by said grantors or either of them, as the case may be, without let or hindrance, and free from all interference from any source whatever, and from all duty to report their action, and from all liability to account in any manner therefor, and from all liability for waste, loss, misappropriation, or for any act or deed whatever, by them or either of them done or permitted.

Fourteenth, the Custody of the Persons of Minors:

And further, in pursuance of said desire, the grantors hereby provide that the Trustees named in this Grant, and their successors, may, in the name of the Institution become the custodian of the persons of minors, taking such custody in the manner, and for the time, and in accordance with the provisions of Sections 264 to 276, inclusive, of the Civil Code of the State of California.

Fifteenth, Limitations Upon the Powers of the Trustees:

1. Neither the Trustees herein named, nor their successors, shall have power to sell or convey the real property hereinbefore described and granted.

2. The Trustees herein named, and their successors, shall serve without compensation.

Sixteenth, Miscellaneous:

The grantors hereby declare:

1. That all the property hereby conveyed was acquired by them during coverture, and was, until this Grant was executed, their community property, and for that reason, and because of their mutual desire to be associated in this undertaking, they in accordance with the provisions of the aforesaid Act of the Legislature have joined in this conveyance.

2. This Grant, and all grants and devises hereafter made by the grantors or either of them for endowing and maintaining the Institution hereby founded, shall be liberally construed, and always with a view to effect the objects and promote the purposes of the grantors, as herein expressed.

Note: The terms, validity, and legal effect of the foregoing grant have been determined by several decrees of the superior court of the county of Santa Clara. The original trust has been amended by addresses of Mrs. Jane Lathrop Stanford, June 1, 1897; May 31, 1899; November 1, 1901; October 3, 1902; and June 1, 1903. The amendment of the last mentioned date changes the number of trustees to fifteen, and provides that the term of each trustee thereafter elected shall be ten years. The life tenure of trustees then living was not affected. A majority of the Board of Trustees constitutes a quorum.

JUDICIAL DECISIONS

Stanford's Legacy Subject to Collateral Inheritance Tax. The legacy of \$2,500,000 to trustees for Stanford University left by Leland Stanford at his death, June 21, 1893, was subject to a tax of \$5 on each \$100 under the California Collateral Inheritance Tax Act of March 23, 1893, (California Statutes, 1893, page 193) which became effective 60 days after its passage. This act provided that "All taxes imposed by this act . . . shall be due and payable at the death of the decedent." An act of March 9, 1897, (California Statutes, 1897, page 77) amended the above act by exempting certain classes of corporations of which Stanford University is one. It further provided that the exemption should apply to all cases arising subsequent to the passage of the original act, except where the tax had been paid. The retroactive feature of the amendatory

act was held unconstitutional as in contravention of the constitutional provision prohibiting gifts by the legislature. "A legatee must take his estate on such conditions as at the time the state may have imposed," and subsequent legislation can not affect such vested right. The state's right to the tax in question vested at the death of Leland Stanford, June 21, 1893. *Estate of Leland Stanford*, 126 Cal. 112, 58 Pac. 462 (1899).

STEVENS INSTITUTE
OF TECHNOLOGY
HOBOKEN, NEW JERSEY

A privately controlled College of Engineering, founded by the will of Edwin A. Stevens in 1867. Incorporated, 1870. Endowment in 1930, \$3,300,000. Estimated annual income from endowment, \$150,000. Total annual expenditures, about \$550,000.

CHARTER OF STEVENS INSTITUTE OF TECHNOLOGY¹

AN ACT TO INCORPORATE THE STEVENS INSTITUTE OF TECHNOLOGY

Whereas, the late, Edwin A. Stevens, by a certain codicil in his last will and testament, bearing date the fifteenth day of April, eighteen hundred and sixty-seven, did provide as follows, viz: "And I do further give, devise and bequeath to my said wife, Martha B. Stevens, William W. Shippen and Samuel B. Dod, and to their heirs and assigns forever, to hold as joint tenants, and not as tenants in common, in trust as hereinafter mentioned, all that block of land in Hoboken, bounded by Hudson Street, River Street and Fifth and Sixth Streets, (excepting such interests therein, if any, as I may not own at my death,) and one hundred and fifty thousand dollars in the stock and bonds of the Morris and Essex Railroad Company, reckoning the same at par; that is to say, one-half of that sum in the first mortgage bonds of said company, and one-half in the said stock; I direct and empower the acting trustees or trustee under this trust (whether the original trustees herein named, or the survivors or survivor of them, or his, her or their successors,) at any time or times when one or two shall be dead or have ceased to act, to appoint one or two new trustees in his or her or their stead, who shall have died or ceased to act, and by advice of counsel, my trustee or trustees in whom the legal title shall be vested, shall convey, assure to and vest in said three trustees (the appointing as well as the new trustee or trustees) the said trust property in fee simple as joint tenants and not as tenants in common, in trust; and this trust is this: that upon said land, at such time as the acting trustee or trustees shall think proper, certainly within two years after my death, he, she, or they shall, out of the proceeds, of said personal property, (to be procured by sale or other prudent disposition, investment, use or appropriation thereof, in the discretion of the trustee or trustees for the time being,) erect of some substantial but economical material, as substantial and economical as trap rock, a plain building or buildings, suitable for the uses of an institution of learning, which I direct my acting trustee or trustees for the time being, out of the means herein provided,

¹From a pamphlet entitled, *An Act to Incorporate the Stevens Institute of Technology*. Supplied by Stevens Institute, 1932.

and such as shall proceed therefrom, with all convenient speed and within three years after my decease, to establish there, employing, paying and discharging at his, her, or their discretion, the officers and tutors and servants thereof, and to forever manage and control, at his, her or their discretion, but for the benefit, tuition and advancement in learning of the youth residing from time to time hereafter within the state of New Jersey; but my said acting trustee or trustees shall, from time to time, decide who of said youth shall receive the benefit thereof, and direct the tuition in said institution, and make all proper by-laws, rules and regulations, for the management of the officers, tutors, servants and scholars connected with the said institution; the tuition is not to be wholly free, unless to such youth as said trustee or trustees shall direct, nor is it my intention that the cost of tuition of any youth shall be wholly paid by him or her; the proportion of payment by each youth I leave to the discretion of the acting trustee or trustees; it is my intention that the institution hereby directed and created shall be perpetual, and that the above mentioned trustees, and their successors, shall forever continue and be the governors thereof, and have the superintendence of the same; and it is my will and desire that, if it cannot be legally done, according to my above intention by them, without an act of the legislature of the state of New Jersey, they will, as soon as possible, and certainly within three years of my decease, apply for an act of the legislature to incorporate them, for the purposes above specified, and to effectually provide for the establishment and maintenance of said institution with the means which I have devoted by this, my will and testament, to the said purpose; and I do further declare it to be my will and intention that the said real and personal property hereinbefore and hereinafter devised and bequeathed to my said trustees, for said purposes, shall, at all events, be applied for the uses and purposes above set forth, and that is my desire; all courts of law and equity will so construe this, my will, as to have the said property, real and personal, appropriated to the above uses, and the same shall, in no case, for want of legal form or otherwise, be so construed as that my relatives, heirs, devisees or legatees, or any other person, shall inherit, possess, or enjoy said real or personal property hereinbefore and hereinafter devised and bequeathed for the said purposes, except in the manner and for the uses hereinabove specified: "and also did further provide and direct as follows, to wit: "I do also, out of the said last mentioned residue of my estate (excluding Castle Point, and the homestead lot and the houses thereon,) remaining after the payment of my debts, the said eight hundred thousand dollars in legacies, and the appropriation of so much of my estate as is necessary to

answer the before mentioned charitable bequests and devises, and the appropriation for the steam battery, give, devise and bequeath to my said trustees of said institution of learning, and direct my executors to pay to them within five years after my decease, such sum of money, not exceeding five hundred thousand dollars, as the said trustees of said institution of learning, in their discretion, shall think necessary to be set apart, invested and appropriated to and for the purpose of forever maintaining the said institution of learning, for the purposes above described, so that the same be literally maintained out of the income and interest of such sum; and said sum of money, and the interest and increase thereof, shall be subject to all the trusts hereinbefore declared with respect to the said institution of learning, and the property appropriated hereinbefore for the erection, maintenance and establishment; and I do, with reference to the said sum and interest, and the income thereof, declare my devise and intention to be the same as I have before fully expressed with reference to the property before devised and bequeathed for the same purposes," therefore:

1. Be it Enacted by the senate and General Assembly of the State of New Jersey, that Martha B. Stevens, William W. Shippen and Samuel B. Dod, and their successors, shall be and they are hereby constituted a body politic and corporate by the name of "The Trustees of the Stevens Institute of Technology," and by that name shall have perpetual succession according to the provisions of said codicil, and may sue and be sued, implead and be impleaded, and may purchase and hold property whether acquired by purchase, gift or devise, and whether real, personal or mixed, and may make and have a corporate seal, and the same break and alter at their pleasure, and shall have all other rights belonging to similar corporations by the laws of this state.

2. And be it enacted, That the entire management of the affairs and concerns of the said corporation, and all the corporate powers hereby granted, shall be hereby vested in the above mentioned trustees to manage and control the same in said codicil provided.

3. And be it enacted, That the Trustees shall have power from time to time to enact by-laws, not repugnant to the constitution or laws of the United States or of this state or to this act, for the regulation and management of the said corporation or institution of learning, to fill up vacancies in the board, and to prescribe the number and description, the duties and powers of the officers, the manner of their appointment and the term of their office, as in said codicil directed and empowered to do.

4. And be it enacted, That for the purpose of carrying out the object of this act the said corporation shall have power from time to time to purchase, take and hold real and personal estate and sell, lease and dispose of the same; provided, that nothing in this act contained shall empower the said corporation to sell, lease or dispose of that block of land in Hoboken, bounded by Hudson Street, River Street and Fifth and Sixth Streets, if at any time the title to the same shall become vested in the said corporation.

5. And be it enacted, That the said corporation shall have and possess the right and power of conferring the usual degrees appropriate to a school of technology.

6. And be it enacted, That this act shall take effect immediately.

Approved February 15, 1870.

STATE OF NEW JERSEY

DEPARTMENT OF STATE

I, Thomas F. Martin, Secretary of State of the State of New Jersey, do hereby Certify that the foregoing is a true copy of An Act to Incorporate the Stevens Institute of Technology, as the same is taken from and compared with the original Proved February 15, 1870, and now remaining on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at Trenton, this Nineteenth day of April A.D., 1926.

THOMAS F. MARTIN,
Secretary of State.

(Seal)

JUDICIAL DECISIONS

Tax Exemption: Lands and Buildings. Land belonging to the institute, upon which there is a laboratory of chemistry containing chemical laboratories, lecture rooms, and recreation rooms used by students in connection with their courses in chemistry, the portion not actually occupied by the building being necessary for its fair use and intended to be used for other college buildings, is exempt from taxation under the act of April 8, 1903, which exempts all buildings actually and exclusively used for colleges not conducted for profit, not exceeding 5 acres in extent for each. *Trustees of Stevens Institute of Technology v. Bowes*, 74 N.J. Law 80, 70 A. 730 (1906).

Land acquired by the Institute after the erection of its academic buildings, separated therefrom by a street and used mainly for athletic purposes, is not land whereon buildings are situated necessary to the fair use and enjoyment thereof, so as to be entitled to exemption from taxation under the Tax Act of 1903. *Trustees of Stevens Institute of Technology v. Bowes, Collector*, 78 N.J. Law 205, 73 A. 38 (1909).

Two vacant lots owned by the Institute and used as athletic fields are subject to assessments by the city of Hoboken. *Stevens Institute of Technology v. State Board of Taxes and Assessments and the City of Hoboken*, 3 N.J. Misc. R. 1094, affirmed 102 N.J.L. 727, 130 A. 925 (1926).

SWARTHMORE COLLEGE

SWARTHMORE, PENNSYLVANIA

A private co-educational college, limited to 500 students. Founded in 1864 by members of the Religious Society of Friends, but is non-sectarian in management and in instruction. Endowment in 1930, \$6,057,000. Annual budget for instruction and administration, \$785,000. Swarthmore College was originally chartered as a stock corporation for profit. In 1910 an Amendment was approved, providing that the representation of the property and franchises of the College through shares of capital stock was annulled and the management was vested in a Board of thirty-two Managers, who have power of succession. This Amendment prohibited any distribution of the assets or income of the College among the members of the Corporation, or any diversion of its funds from educational purposes.

PROVISIONS OF CHARTER OF SWARTHMORE COLLEGE¹

In Force November 1, 1931

AN ACT TO INCORPORATE SWARTHMORE COLLEGE

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by authority of the same: That James Martin, John M. Ogden, Ezra Michener, Mahlon K. Taylor, Thomas Ridgway, James Mott, Dillwyn Parrish, William W. Longstreth, William Dorsey, Edward Hoopes, William C. Biddle, Joseph Powell, Joseph Wharton, John Sellers, Clement Biddle, P. P. Sharples, Edward Parrish, Levi K. Brown, Hugh McIlvain, Franklin Shoemaker and their associates and successors forever be, and they are hereby made and constituted a body politic and corporate, under the corporate title of SWARTHMORE COLLEGE, and under that name shall have perpetual succession, and are hereby empowered and made capable in law to purchase, take, hold and enjoy to them and their successors real and personal estate not exceeding in the aggregate the clear yearly value of One million Dollars;² and to sell, demise, convey, assure, transfer and dispose of their estate or interest therein, and also to improve and augment and apply the same with the rents, issues, profits and income thereof to the purposes of their institution; and the said corporation by the name aforesaid shall and may sue and be sued, plead and be impleaded, answer and be answered, defend and be defended in all courts of law and equity, and shall have power to make, have and use a common seal and the same to change, alter and renew at their pleasure and also to make and execute such by-laws, ordinances and regulations not contrary to the laws and constitution of this commonwealth as to them shall seem meet.

SECTION 2. That the said corporation be authorized to establish and maintain a school and college for the purpose of imparting to persons of both sexes knowledge in the various branches of science, literature and the arts, and the Board of

¹Charter and By-Laws of Swarthmore College, 1931, pp. 1-2. Published for the College.

Original charter approved April 1, 1864, P.L. 185. Supplement approved April 14, 1870, P.L. 1161 and amendments by the Court of Common Pleas of Delaware County approved April 8, 1899, February 1, 1892, February 26, 1908, January 23, 1909, October 22, 1910, and July 17, 1931.

²Amendment of July 17, 1931, C. P. Delaware County, June Term, 1931, No. 515, recorded at Media in Charter Book H, page 357, etc.

Managers shall have power to confer upon the graduates of the said College and upon others when by their proficiency in learning they may be entitled thereto, such degrees as are conferred by other colleges and universities in the United States.

SECTION 3. So much of the charter of Swarthmore College as provides for the representation of the property and franchises of the corporation by means of a capital stock divided into shares is hereby annulled.³ The affairs of the corporation shall hereafter be managed by a Board of thirty-two Managers, who shall have power to elect their successors and appoint the President, Secretary and Treasurer and other officers and adopt such by-laws as may be necessary for the management of the business.³ The President, Secretary and Treasurer shall be *ex officio* members of the Board of Managers and eleven members shall constitute a quorum for the transaction of business. The government and direction of the said College, the appointment and employment of professors and other officers concerned therewith and the general management of the affairs of the College shall be entrusted to the Board of Managers, who may borrow money on bonds to be secured by mortgage on real estate of the corporation to trustees for the bondholders to an amount not exceeding One hundred thousand Dollars and who shall have power to enact such rules and regulations not inconsistent with the charter and amendments thereto as they shall see fit. The President and Secretary shall affix the corporate seal and attest all documents as may be directed by the Board of Managers. Women single or married may be members of said corporation and managers and officers thereof.⁴

SECTION 4. None of the assets or income of the corporation shall ever be divided among the members thereof or be diverted from the objects for which it was incorporated.⁵

³Amendment of October 22, 1910.

⁴Amendment of January 23, 1909.

⁵Amendment of October 22, 1910.

THE TULANE UNIVERSITY OF LOUISIANA

NEW ORLEANS, LOUISIANA

A privately controlled, non-sectarian and co-educational university. First organized as the Medical College of Louisiana in 1834. In 1845 the state constitution established the University of Louisiana with Departments of Law, Medicine, and Natural Sciences and Letters. In 1882, Mr. Paul Tulane donated his property in New Orleans to a Board of Administrators to be known as the Tulane Educational Fund for the purpose of the higher education of white young persons. In 1884 the state legislature transferred the property of the existing University of Louisiana to the board and the name was changed to the Tulane University of Louisiana. In 1886, the H. Sophie Newcomb Memorial College was established as the women's department in the university by Mrs. Josephine Louise Newcomb who donated \$100,000 and later bequeathed \$2,700,000. The university now includes the College of Arts and Sciences, the College of Engineering, the H. Sophie Newcomb Memorial College for Young Women, the Graduate School, the College of Law, the College of Medicine, the College of Commerce and Business Administration, the Extension Courses for Teachers, the Department of Middle American Research, the School of Social Work, the Dental Clinic, and the Summer Schools. In 1930 the total endowment exceeded \$10,000,000 and the annual income from all sources was more than \$1,130,000.

LAWS RELATING TO THE TULANE UNIVERSITY OF LOUISIANA

CONSTITUTIONAL PROVISIONS

CONSTITUTION OF LOUISIANA

ARTICLE XII

SECTION 24. The Tulane University of Louisiana, located in New Orleans, is hereby recognized as created and to be developed in accordance with the provisions of the Legislative Act No. 43 approved July 5, 1884.

CHARTER OF THE TULANE UNIVERSITY OF LOUISIANA¹

UNITED STATES OF AMERICA,
STATE OF LOUISIANA,
CITY OF NEW ORLEANS.

Be it known, that on this twenty-ninth day of the month of May, in the year of our Lord one thousand eight hundred and eighty-two, and of the independence of the United States of America the one hundred and sixth,

Before me, Charles G. Andry, a Notary Public, duly commissioned and sworn, in and for this city and the Parish of Orleans, State of Louisiana, therein residing, and in the presence of the witnesses hereinafter named and undersigned,

Personally came and appeared, the several persons whose names are hereunto subscribed, who declared, that availing themselves of the provisions of the statutes of this State relative to the organization of corporations for literary, scientific, religious and charitable purposes, they do by these presents organize themselves into a body politic and corporate, with the view of carrying out the wishes, intentions and suggestions of Paul Tulane, Esq., formerly of the said city of New Orleans, and now residing in Princeton, in the State of New Jersey, as the same are expressed and set forth in a letter to them, the present appearers, by the said Paul Tulane, dated the second day of May, 1882, the original of which letter is hereunto annexed, and is transcribed herein for reference and explanation, and is in the following words, to-wit:

¹From a pamphlet entitled, *Charter and By-Laws of the Administrators of the Tulane Educational Fund*. pp. 5-12. New Orleans: Published by the University, 1927.

Princeton, May 2, 1882.

To Messrs. Randall L. Gibson, Chas. E. Fenner, James McConnell, T. G. Richardson, M. D., Edward White, E. H. Farrar, P. N. Strong, B. M. Palmer, D. D., Hugh Miller Thompson, D. D., Chas. A. Whitney, Sam'l H. Kennedy, Walter Stauffer, Cartwright Eustis, Henry Ginder, John T. Hardie, R. M. Walmsley, and Wm. O. Rogers:

Gentlemen—A resident of New Orleans for many years of my active life, having formed many friendships and associations dear to me, and deeply sympathizing with its people in whatever misfortunes or disasters may have befallen them, as well as being sincerely desirous of contributing to their moral and intellectual welfare, I do hereby express to you my intention to donate to you by an act of donation *inter vivos*, all the real estate I own and am possessed of in the said city of New Orleans, State of Louisiana, for the promotion and encouragement of intellectual, moral and industrial education among the white young persons in the city of New Orleans, State of Louisiana, and for the advancement of learning and letters, the arts and sciences therein, my intention being that the benefits shall be applied and expended in the city of New Orleans.

By the term education, I mean to foster such a course of intellectual development as shall be useful and of solid worth, and not be merely ornamental or superficial. I mean you should adopt the course which, as wise and good men, would commend itself to you as being conducive to immediate practical benefit, rather than theoretical possible advantage. I wish you to establish or foster institutions of a higher grade of learning where the young persons to be benefitted shall, upon due examination, be found competent and qualified for admission, both by age and previous training, to receive the benefits of a more advanced degree of educational culture.

Intellectual advancement should be unfettered by sectarianism, but the profound reverence I entertain for the Holy Scriptures leads me to express here the hope, that the educational development intended by this gift, should never antagonize, but be in harmony with the great fundamental principles of Christian truth contained in them.

I express to you now my formal intentions in order to suggest to you the advisability, should you determine to aid me in my purposes, that you should take such steps as may be necessary under the laws of Louisiana to enable you to accept the donations when made, thus giving me the assurance that my purpose, when executed, will be carried out with fidelity, and be rich in bountiful results.

The fact that property donated for educational purposes is at this time liable to taxation in the State of Louisiana, has occasioned me much embarrassment, as I should like to feel that the citizens of that State, who are to be the beneficiaries of this donation, should enjoy its advantages to the full measure of the value of the property donated. There are other States whose laws do not, by taxation, repel such gifts in aid of education, whose wise example, I am assured, will be followed by the State of Louisiana and the city of New Orleans in such instance; and I earnestly urge that you make immediate effort to secure the exemption of this property from taxation, and be constant in so doing until your efforts are successful.

The character of the property donated is to remain unchanged. It cannot be mortgaged, and it cannot be sold nor incumbered in any way, except at the end of not less than fifty years, as hereinafter stated. Mortgaging it or selling it, and the investment of the proceeds in stocks, bonds or other securities, might and probably would lead to disaster, owing to the uncertain and fluctuating nature of the value of securities of every description. On the other hand, the real estate, the title to which I intended to donate to you, is well located, and can not fail to increase in value as the city shall become prosperous.

You must keep the property well insured in solvent offices and in good repairs, so that the best rental possible may be realized.

The plans and details of any organization, corporate or otherwise, must of necessity be left to your own judgment; but I desire to communicate to you my wishes in such manner as to enable you more fully to enter into the motives which impel me, thereby enabling you completely to enter into my thoughts and purposes.

Of course, whatever I may determine to donate to you, should you conclude to organize, will be (whilst leaving you the absolute owners of the property) with the object of enabling you, in your discretion, to use the revenues for the purpose already by me mentioned.

I suggest and recommend—1. That in your organization, whatever form it may assume, that my friend, Gen. Randall Lee Gibson, be your chairman or president, and that Judge Chas. E. Fenner and James McConnell may be vice presidents or vice chairmen. 2. That you provide for the filling of any vacancies in your number by death, resignation or otherwise, by election. 3. That whilst my desire is that you shall continue my purpose for more than fifty years, nevertheless I would consider it no violation of these wishes should you, when organized, determine, after fifty years, no longer to perform the duties incident to the ownership of this property which I may

donate, and the income of which, I have expressed the desire, that you administer, as aforesaid; in that event, I suggest that you distribute the property, or the proceeds from the sale thereof, among such educational or literary institutions, or for such educational purposes as you may determine, in the city of New Orleans, as are contemplated by this donation. 4. In order that there shall be no doubt in regard to my intentions, I will say it is not my desire to bind you to distribute the incomes or benefits of the fund or property to any particular school, college or institution of learning, or to create any claim on the part of any school, college or institution of learning, to any distributive share; nor do I design to subject you collectively or individually to any responsibility to those intended to be benefitted, or to any individual responsibility of any sort for the management of the property and fund which may be by me donated.

I have entire confidence that you will carry out with wisdom, equity and fidelity my expressed suggestions. It would be personally agreeable to me if you would retain the services of Mr. P. N. Strong, of New Orleans.

In order to prevent misapprehension, I desire to say you should, of course, make such disbursement as you may deem it fair to expend in the employment of any necessary agent or otherwise, and especially to keep the property well insured, and in a proper state of repair.

With devout gratitude to our Heavenly Father for enabling us to perform these plans, and invoking his divine blessing upon you and your counsels, and upon the good work proposed among the present and future generations of our beloved Crescent City,

I remain, with great respect,

Your friend and humble servant,

PAUL TULANE.

ARTICLE I

And the said appearers further declared that the corporation of which the organization is contemplated by this act shall be known and designated as "The Administrators of the Tulane Educational Fund." Its domicile is hereby fixed in the City of New Orleans, Parish of Orleans, State of Louisiana, and it shall exist and continue during ninety-nine years from the date hereof.

ARTICLE II

The corporate powers of this corporation shall be exercised by the following named incorporators, who shall constitute a perpetual Board of Administrators, to-wit: Randall Lee Gibson, Charles Erasmus Fenner, James McConnell, Tobias Gibson

Richardson, M. D., Edward Douglas White, Edgar Howard Farrar, Paschal Neilson Strong, Benjamin M. Palmer, D. D., Hugh Miller Thompson, D. D., Charles Augustus Whitney, Samuel Horton Kennedy, Walter Robinson Stauffer, Cartwright Eustis, Henry Ginder, John Timmons Hardie, Robert Miller Walmsley, William Oscar Rogers. In case of the death or resignation of any of the seventeen administrators above named, the vacancies which shall thereby be created will be filled by such other persons as may be chosen or elected by a majority of the remaining administrators at any regular or special meeting after the said vacancy shall have occurred; *provided*, that due notice of such election shall be given in writing to the said remaining administrators.

ARTICLE III

The objects, purposes and powers of this corporation are hereby declared to be: To hold property, both real and personal, by purchase or by donation, for educational purposes, and to use and dispose of the same upon the terms and conditions upon which the said property is or may be donated or acquired.

ARTICLE IV

The officers of the corporation shall be a President, two Vice-Presidents, a Treasurer and a Secretary, both of which last named officers may, in the discretion of the Board, be filled by one person.

The President is hereby declared to be Randall Lee Gibson; Judge Charles E. Fenner shall be the First Vice-President, and James McConnell, Esq., the Second Vice-President. The President and Vice-Presidents shall have such administrative powers as shall be determined by the Board and specified in the By-Laws, to be adopted, and shall exercise their functions during life, or until they shall have resigned. In case of death or resignation of any one of the said officers, the vacancy which may occur shall be filled by an election, to be held thirty days after due written notice shall have been given to the members of the corporation. The Treasurer and Secretary shall be elected by the members of the corporation, in such manner as may hereafter be specified by its By-Laws.

ARTICLE V

Citations and other legal process shall be served on the President, or in his absence on either of the Vice-Presidents.

ARTICLE VI

A general meeting of the administrators will be held at least once a year, on the second Tuesday of May.

The rules and regulations for the conduct and management of the business of the corporation, and the administration of its property, shall be provided for by By-Laws, to be adopted by a meeting of the incorporators or administrators, called for that purpose, within sixty days from the date hereof; the said By-Laws shall be subject to amendment at any general meeting of the corporation by a majority of the members of the corporation.

Thus done and passed in my office, in the City of New Orleans aforesaid, on the day, month, and year first above written, in the presence of Messrs. Edgar Grima and George Grima, competent witnesses, both of this city, who hereunto sign their names with the said appearers and me, the said Notary, after due reading of the whole.

The original is signed: Randall Lee Gibson, Chas. E. Fenner, James McConnell, Tobias G. Richardson, E. D. White, Edgar Howard Farrar, Paschal Neilson Strong, Hugh Miller Thompson, Samuel H. Kennedy, Cartwright Eustis, Henry Ginder, William O. Rogers, B. M. Palmer, Walter R. Stauffer, Chas. A. Whitney, John T. Hardie, R. M. Walmsley, Edgar Grima, George Grima, Charles G. Andry, Notary Public.

Having examined the foregoing Act of Incorporation, I am of the opinion that the purposes and objects of the same, as specified therein, are legal, and that none of the provisions therein contained are contrary to law. I therefore approve the same.

JOSHUA G. BAKER,
Asst. Dist. Attorney, Parish of Orleans.

New Orleans, June 12th, 1882.

I, the undersigned, Recorder of Mortgages in and for the Parish of Orleans, State of Louisiana, do hereby certify that the above and foregoing Act of Incorporation of the "Administrators of the Tulane Educational Fund" was this day duly recorded in my office, in Book 226, Folio 122.

(Signed) GEO. GUINAULT, *Deputy.*

New Orleans, June 12, 1882.

A true copy of the original, extant and of record in my office.

CHAS. G. ANDRY,
Notary Public.

ACT No. 43, OF THE GENERAL ASSEMBLY, SESSION OF 1884,

ESTABLISHING

THE TULANE UNIVERSITY OF LOUISIANA²

AN ACT

To foster, maintain and develop the University of Louisiana, to that end to make the Board of Administrators of the Tulane Educational Fund, as presently constituted, with the addition of the Governor, Superintendent of Public Education, and Mayor of the city of New Orleans, as *ex officio* members thereof, the Administrators of the University of Louisiana, which shall hereafter be known as the "Tulane University of Louisiana"; to invest said Tulane Board with all the powers, privileges, franchises and immunities now vested in the Board of Administrators of the University of Louisiana; and with such other powers as may be necessary or pertinent to develop, control, foster and maintain it as a great university in the city of New Orleans. To give to the Administrators of the Tulane Education Fund the control, management and use of all the property of the University of Louisiana, in the city of New Orleans, for the purposes aforesaid: To exempt, in consequence of the terms of this act and the dedication of its revenues to the purposes stated in this act, all the property, real and personal, present and future, of the said Board of Administrators of the Tulane Education Fund, from all taxation, whether State, parochial or municipal: To make a contract, irrevocable and conclusive, between the State and Administrators of the Tulane Education Fund, covering the provisions of this act: To enable the said Board of Administrators of the "Tulane Education Fund" to decline to accept the provisions of this act, unless the same, in all its provisions, be ratified and approved by a constitutional amendment, to be submitted at the next general election: To give said Board of Administrators of the "Tulane Education Fund," upon the adoption of the said constitutional amendment, not only the full powers of administration over the University of Louisiana conferred by this act, but also the power to create, develop and maintain a great University in the city of New Orleans, which University so to be created shall perpetually be under their full and complete control: To enable said Board, should they act under the provisions of this act, pending the submission of the said constitutional amendment, to withdraw and relieve themselves from all the effects of said action should said proposed constitutional amendment be rejected, and to provide for the submission of a constitutional

²*Op. Cit.* pp. 21-31.

amendment ratifying the provisions of this act to the people of the State at the next general election;

Whereas, Paul Tulane, Esq., formerly a resident of this State, and now of Princeton, New Jersey, with the beneficent purpose of fostering higher education in this State, did, in May, 1882, express to certain citizens of this State his intention to donate for such purposes valuable real estate to him belonging, situate in the City of New Orleans; and,

Whereas, The citizens to whom the intention of Paul Tulane, Esq., were expressed, did, by act, before Charles G. Andry, a notary public in the city of New Orleans, organize themselves into a corporation, under the name of the "Administrators of the Tulane Education Fund," with the objects and purposes specified in said act of incorporation; and,

Whereas, Since the formation of said corporation, Paul Tulane, Esq., in the execution of his previously expressed intentions, has donated to said Administrators of the "Tulane Education Fund" nearly one million dollars, the revenues whereof are to be used for the promotion and encouragement of intellectual, moral and industrial education, and has expressed his intention to largely increase said donation should this act be adopted; and,

Whereas, The said Board of Administrators of the "Tulane Education Fund," in order to make their work fruitful in results, have expressed their desire to take charge of the University of Louisiana, in the city of New Orleans, and to devote the revenues of the property now owned, or hereafter to be owned, by said Board, to its expansion and development; and upon the adoption of a constitutional amendment to that end, to apply all the revenues of property now owned, or hereafter to be acquired by them, to the creation and development in the city of New Orleans of a great University, whereby the blessings of higher education, intellectual, moral and industrial, may be given to the youth of this State; and,

Whereas, Under the terms of this action, as proposed by said Board, the property of said Board, and the revenues thereof, will not be used for purpose of private or corporate income or profit, but will be exclusively dedicated to school purposes, and to the service of the State in maintaining and developing the University of Louisiana, an institution recognized in the Constitution, therefore entitling the said property of said Board to exemption from all taxation, both State, parochial and municipal; therefore,

Be it enacted by the General Assembly of the State of Louisiana,

SECTION 1. That the Board of Administrators of the University of Louisiana shall hereafter, instead of the Board appointed

as provided by section thirteen hundred and fifty-one (1351) of the Revised Statutes, consist of the seventeen administrators of the "Tulane Education Fund," with power, perpetually, to fill any vacancy in their own number; *provided*, that the said Board shall, on the passage of this statute, recognize by formal notarial act the Governor of the State, the Superintendent of Public Education and the Mayor of the City of New Orleans, as *ex officio* members of said Board.

SECTION 2. *Be it further enacted, etc.*, That the Board of Administrators of the "Tulane Education Fund," as administrators of the University of Louisiana shall have all the rights, powers, privileges, franchises and immunities, now vested in the Board of Administrators of the University of Louisiana by existing laws. That they shall further have full direction, control and administration of the University of Louisiana, now established in the city of New Orleans, in all its departments as also of all the property belonging to the State of Louisiana, and now dedicated to or used by the University of Louisiana as well as of all property controlled or used by the said University of Louisiana and for the purposes thereof, and Board of Administrators of the University of Louisiana are hereby empowered and directed to turn over to the Board of Administrators of the "Tulane Education Fund" all the property, rights, books, papers and archives now under their administration or control; *provided*, that if the custody of the State Library should be transferred to the Tulane University of Louisiana, as herein established by the consolidation of the University of Louisiana at New Orleans with the Board of Administrators of the "Tulane Education Fund," as herein provided for, through the University of Louisiana, at New Orleans, as it now exists, or otherwise, it shall be on the express condition and agreement that the State of Louisiana, may resume the custody and control of said State Library, whenever it may be deemed advisable; *and provided further*, that after the establishment of the "Tulane University of Louisiana," as herein provided for, and after the transfer of the custody of the State Library thereto as aforesaid, if the custody thereof shall be transferred to the "Tulane University of Louisiana," as herein established, then and in that event, the State of Louisiana shall be relieved of and released from all obligations to pay the salary or compensation of the State Librarian or his assistants, as is now or may hereafter be fixed by law, during the period the said State Library may remain in the custody of said "Tulane University of Louisiana;" but that during said period the salary or compensation of said State Librarian shall be paid by the "Tulane University of Louisiana." An inventory shall be made of all the property, movable and immovable,

belonging to the University of Louisiana, and transferred by this act to the control and administration of the Administrators of the Tulane Education Fund, by two appraisers to be appointed for that purpose by the Governor of the State and sworn, which appraisal shall be filed in the office of the Secretary of State, as evidencing the description and appraised value of the property so transferred, and also in order that the liability of the said Administrators of the Tulane Education Fund may not be extended beyond a return of the property, so transferred, in any contingency; *provided further*, that the property so transferred, may not be sold or disposed of, except under Legislative sanction; *provided further*, that if the "Tulane University of Louisiana," as herein established, should cease to use the property, and exercise the privileges, franchises and immunities, now under the control and administration of, and enjoyed by the University of Louisiana, as now constituted and transferred by this act, for the exclusive purposes intended by this act, then and in that event the State of Louisiana shall have the right to resume the custody, control and administration of said property, and the exercise of said privileges, franchises and immunities.

SECTION 3. *Be it further enacted, etc.*, That the said Board of Administrators of the "Tulane Education Fund," shall perpetually as Administrators of the University of Louisiana, as above provided, have full and complete control of all the property and rights, now vested in the University of Louisiana. The said Board shall have the powers above provided in addition to those conferred by its charter, by act passed before Chas. G. Andry, Notary Public, in the city of New Orleans, on the 29th day of May, Anno Domini 1882, including the power to hold and own all real and personal property, now to said Board belonging, or hereafter to be by it acquired, during its corporate existence, for the purposes and objects of its being, or the revenues whereof are to be solely applicable to such purposes.

SECTION 4. *Be it further enacted, etc.*, That in honor of Paul Tulane and in recognition of his beneficent gifts and of their dedication to the purposes expressed in this act, the name of the University of Louisiana be, and the same is hereby changed to that of the "Tulane University of Louisiana," under which name it shall possess all the powers, privileges, immunities and franchises, now vested in said University of Louisiana, as well as such powers as may flow from this act or may be vested in said Board, under the terms of this act, from the adoption of the Constitutional Amendment hereafter referred to. The purpose of this act, being, to invest the Board of Administrators of the "Tulane Education Fund" with all the rights now vested

in the University of Louisiana; to give said Board moreover complete control of said University in all its departments, and in every respect, with all the powers necessary or incidental to the exercise of said control. To enable said Board, besides the powers designated by this act, to have irrevocably upon the adoption of said Constitutional Amendment, full power with the rights hereby conferred, to create and develop a great University in the city of New Orleans, to be named as aforesaid. Said University to be established by the said Board of Administrators of the "Tulane Education Fund," to be dedicated to the intellectual, moral and industrial education of the youth of the State, in accordance with the Charter of said Board of Administrators of the "Tulane Education Fund."

SECTION 5. *Be it further enacted, etc.,* That in consideration of the agreement of said Board to develop and maintain the University of Louisiana, and thereby dedicate its revenues not to purposes of private or corporate income or profit, but to the public purposes of developing and maintaining the University of Louisiana, all the property of the said Board, present and future, be and the same is hereby recognized as exempt from all taxation, State, parochial and municipal; this exemption to remain in force as long as the revenues of the said Board are directed to the maintenance of the University of Louisiana, as aforesaid, or until said Constitutional Amendment be adopted. That adoption of said amendment shall operate such exemption in consideration of the said Board in expending their revenues as aforesaid, or creating, maintaining and developing a great University in the city of New Orleans; *provided*, that the property exempted from taxation by this act shall not exceed in value five millions of dollars, invested in real estate not otherwise exempted, which said value shall be determined in the mode required by law for the assessment and valuation of property subject to taxation, it being the true meaning and intent hereof, that all the property of the Tulane University of Louisiana, of whatsoever character, shall be exempted from taxation, State, parochial and municipal, except the excess of real estate belonging thereto, over and above the value of five million dollars as above stated.

SECTION 6. *Be it further enacted, etc.,* That in consideration of the vesting of the administration of the University of Louisiana in the said Administrators of "Tulane Education Fund," of the transfer of the rights, powers, privileges, franchises and immunities of the said University to said Administrators, and of the exemption from all taxation as hereinabove provided, the said Administrators hereby agree to bind themselves, with the revenues and income of the property heretofore given them by

Paul Tulane, Esq., as well as from the revenues of all other property, real, personal or mixed, hereafter to be held, owned or controlled by them, for the purposes of education, to develop, foster and maintain, to the best of their ability and judgment, the University of Louisiana, hereafter to be known as the "Tulane University of Louisiana," and upon adoption of the Constitutional Amendment aforesaid, to perpetually use the powers conferred by this act, and all the power vested in them for the purpose of creating and maintaining in the city of New Orleans a great University, devoted to the intellectual, moral and industrial education and advancement of the youth of this State, under the terms of the donation of Paul Tulane, and the previous provisions of this act. The said Board further agree and bind themselves to waive all legal claim upon the State of Louisiana for any appropriation, as provided in the Constitution of this State, in favor of the University of Louisiana. Besides the waiver of the claim, as aforesaid, as an additional consideration between the parties to this act, the said Board agrees to give continuously, in the academic department, free tuition to one student from each Senatorial and from each Representative district or parish, to be nominated by its members in the General Assembly from among the *bona fide* citizens and residents of his district or parish, who shall comply with the requirements for admission established by said Board. The meaning of this provision being that each member of the General Assembly, whether Senator or Representative, shall have the right of appointing one student, in accordance with the foregoing provisions. The free tuition herein provided for shall continue until each student has graduated from the academic department, unless his scholarship has ceased from other causes. Whenever a scholarship becomes vacant, from any cause, the Senator or Representative, appointing the previous student, or his successor, shall, in the manner prescribed by this section, immediately name a successor.

SECTION 7. *Be it further enacted, etc.*, That this act, in all its provisions be and the same is hereby declared to be a contract between the State of Louisiana and the Administrators of the "Tulane Education Fund," irrevocably vesting the said Administrators of the "Tulane Education Fund" with the powers, franchises, rights, immunities and exemptions herein enumerated and hereby granted, and irrevocably binding said administrators to develop, foster and maintain as above provided, the University as aforesaid in the city of New Orleans, subject to and in accordance with the terms of this act.

SECTION 8. *Be it further enacted, etc.*, That this act, in all its terms, provisions and stipulations, without in any manner affecting the validity thereof, or casting any doubt upon its

constitutionality, be submitted for ratification at the next general election by a constitutional amendment, as hereinabove and hereinafter provided.

SECTION 9. *Be it further enacted, etc.,* That upon the passage and promulgation of this act the said Administrators of the "Tulane Education Fund," shall have the right to avail themselves of the provisions of this act pending the submission of the constitutional amendment aforesaid. In case they should so elect to do, the said Administrators upon the passage of this law and promulgation thereof, shall give notice of such intention to his Excellency, the Governor of this State, which notice shall authorize said Board to act under the provisions of this act and to exercise all the powers, privileges, franchises, immunities and rights which this act confers, and to undertake the performance of the duties by it imposed. In case the said Constitutional Amendment as aforesaid be not ratified, the said Board shall not in any way be held bound by its said action, but shall have the right to relieve itself of all liability growing out of such action by turning over to the Governor of the State, any property received by it from the State, or from the Administrators of the University of Louisiana, under the terms of this act, which to the extent of its imposing any obligation on the said Administrators of the "Tulane Education Fund," shall by said return, become null and void, *provided*, that the said Board may in the event of the defeat of said Constitutional Amendment continue to execute and to avail themselves of the provisions of this act to the full extent that, the same are legal without Constitutional enactment.

SECTION 10. *Be it further enacted, etc.,* That sections 1357, 1362, 1363, 1365, 1366, 1367, 1370, 1372, 1373 and 1374 of the Revised Statutes, be and the same are hereby repealed, and that all laws and parts of laws conflicting in any manner with the terms of this act, be and the same are hereby repealed.

SECTION 11. *Be it further enacted, etc.,* That at the next general election to be held in this State, there shall be submitted to the people of the State, the following amendment to the Constitution: (The terms of the Act No. [here inserting the number of this act], adopted at the session of the Legislature in the year 1884, are hereby ratified and approved; and all provisions of the Constitution of 1879 repugnant thereto, or in any way impairing the passage thereof, are hereby repealed, so far as the operations of said act are concerned).

SECTION 12. *Be it further enacted, etc.,* That the electors who desire to vote at said election for said amendment, shall write or print upon their ballots the words "For the Tulane University amendment," and all electors who desire to vote at said

election against said amendment shall write or print upon their ballots the words "Against the Tulane University amendment."

H. W. OGDEN,
Speaker of the House of Representatives.

CLAY KNOBLOCH,
Lieut. Governor, and President of the Senate.

Approved 5th of July, 1884.

S. D. McENERY,
Governor of the State of Louisiana.

LATER STATUTORY PROVISIONS³

2774. [Act 94, 1890, p. 98.] *Whereas*, it may become desirable, that the real estate and buildings thereon used for the purpose of the medical, law and academic departments of Tulane University of Louisiana, should be disposed of, and other more suitable buildings, in if practicable a more desirable location be provided in their place, and

Whereas, such changes are urged by the faculties of the several departments of the Universities, as necessary and desirable, and the board of administrators of said University, should be vested with the power necessary to act in the premises, for the best interests of the institution, and as in their wisdom shall seem best.

Sale of Real Estate Authorized.

2775. [SECTION 1.] In order to confer the Legislative sanction required by Section 2 of Act No. 43, of 1884, in the case the Board of Administrators of the Tulane Education Fund, should deem it to be for the interest of the institution, to remove the University, or any department, or departments thereof, to some more suitable location within the City of New Orleans, the said board is hereby authorized to lease, sell and dispose of, any part, or of the whole of, the immovable property transferred to it by the State, and to make good title thereto; provided, that the price and terms of said transfer shall be first approved by the Governor of the State; and provided further, that the full amount of the price, received from such sale, or other disposition, shall be reinvested in immovable property within the City of New Orleans, to be bought and used for University purposes, and the said property shall be and remain subject to a first mortgage in favor of the State, for the full amount of said price, the fund so secured, or the property in which the same may be invested, to be held by said Board of Administrators, subject

³Marr's Annotated Revised Statutes of Louisiana, 1915, pp. 932-37.

to the same terms and conditions, as those under which, the property itself was held, as expressed in Act No. 43, of 1884.

Lease of Real Estate Authorized.

2776. [SECTION 2.] In case the Board of Administrators of the Tulane Education Fund should, on account of removal of the University, or any part thereof, vacate the buildings, or any of them, now standing on the property, transferred by the State, to them, and should deem the sale thereof not advisable, the said Board is hereby authorized, if deemed best, to lease said property and buildings for purposes of revenue, or to demolish and remove the same, and to construct in their place, buildings for commercial or other purposes, and to rent the same; provided that the rent received, shall be devoted exclusively to the purposes of the University, and that the property with the new buildings erected thereon shall be subject to all the terms and conditions expressed in Act No. 43 of 1884.

JUDICIAL DECISIONS

Tax Exemption. Neither buildings, nor property of any kind that is used for revenue or profit, although the revenue is to be applied wholly to the support of the university, and the profit is to be expended solely for its benefit, is exempt from taxation. *State of Louisiana ex rel. Board of Administrators of Tulane Educational Fund v. Board of Assessors*, 35 La. Ann. 668, 42 La. 437 (1883).

By the act of July 5, 1884, a contract was made by and between the state of Louisiana and the administrators of the Tulane Education Fund whereby the state delivered to the administrators the rights, privileges, franchises, immunities, and property of the University of Louisiana, and the administrators agreed to dedicate all their revenues to its maintenance and development. This is a consecration of the income of the administrators to public use, and the property from which that income is derived is therefore exempt from taxation. *Administrators of the Tulane Education Fund v. Board of Assessors et al.*, 38 La. Ann. 292, 45 La. 187 (1886).

Property owned by Tulane University whereon the work of the university is conducted is exempt from taxation, though students are required to pay tuition for the privilege of attending; and a partial use of the buildings by teachers employed in the university is not fatal to the exemption. *State ex rel.*

Cunningham v. Board of Assessors of Parish of Orleans, 52 La. Ann. 223, 26 So. 872 (1898).

Disposition of Property Acquired from the State of Louisiana. Act No. 43 of 1884, subsequently adopted as an amendment to the Constitution of Louisiana, transferred to the Board of Administrators of the Tulane Education Fund all the property of the University of Louisiana, to be administered to maintain a new university, and provided that the property so transferred should not be sold or disposed of without legislative sanction. Act No. 94 of 1890 authorized the Board of Administrators to lease, sell, or dispose of such property with the approval of the Governor. It was held that if the board unlawfully disposed of the property the proper course for the state was to sue directly to annul the contract and recover the property for the state. *State v. Board of Administrators of Tulane Education Fund*, 51 So. 483, 125 La. 432 (1910).

Free Scholarships. In consideration of the city's release of its interest in the building known as Mechanics' Hall in order to aid Tulane University to buy the building for its needs as a growing institution, the university agreed to receive annually five boys, to be appointed by the Mayor, as free students. A few years thereafter it began to refuse to receive such students unless each one paid a registration fee of \$5.00 per term (\$15.00 yearly) and additional laboratory fees if enrolled in laboratory courses. The court held that the university must receive the students without registration fees, but was justified in charging them a fee for the use and consumption of apparatus and supplies in the laboratories. *City of New Orleans v. Board of Administrators of Tulane Educational Fund*, 123 La. 550, 49 So. 171 (1909).

Tax Exemption: Fraternity House. A fraternity chapter house near the university campus is not "property devoted to charitable undertakings" within the tax exemption provision, although the fraternity makes loans to students and distributes annually about ten five-dollar Christmas baskets. *Beta Xi Chapter of Beta Theta Pi v. City of New Orleans*, 18 La. App. 130, 137 So. 204 (1931).

Rights of Creditors of the Former Medical College of Louisiana. The "Faculty of the Medical College of Louisiana

and the Medical College of Orleans", created as a corporation by act of April 2, 1835, which became a department of the University of Louisiana by Act No. 49 of 1847 in pursuance of the constitution of 1845, has its corporate existence continued, so far, at least, as to preserve the rights of creditors such as the plaintiff in this case, who held a promissory note (secured by a mortgage) dated April 21, 1852, made by "the Faculty of the Medical Department of the University of Louisiana" and signed by the dean thereof. Defendant's plea of lack of corporate existence and non-liability as individuals could not be sustained. *Stone v. Faculty of the Medical Department of the University of Louisiana*, 28 La. Ann. 104 (1876).

Note: The above case is a part of the history of the Tulane University of Louisiana because the University of Louisiana referred to therein was absorbed by this institution in pursuance of an amendment to the Constitution of Louisiana proposed by Act No. 43 of 1884, and duly adopted.

Validity of Bequest for Medical Department. When Alexander C. Hutchinson's bequest of more than \$1,200,000 to the Tulane University of Louisiana for the use of its Medical Department was contested by his heirs on the ground that (1) being a bequest to one corporation for the use of another, it created a *fidei commissum* or substitution which is unlawful, and purported to set up a type of ownership unknown to Louisiana law; and (2) the legatee had no power to establish and maintain a hospital as required by the terms of the will,—both contentions were overruled, and the validity of the bequest was upheld. The court pointed out that there was only one corporation concerned since the corporation formerly known as the Medical College of Louisiana had suffered *de facto* dissolution by the Act of 1847 which created the University of Louisiana and made the Medical College a department thereof, vesting all property of the Medical College in the Board of Administrators of the University; and that the terms of the will did not conclusively require the construction and maintenance of a hospital—but even if such had been the case, the power to establish and maintain a medical school includes the power to establish and maintain a hospital. *Succession of Hutchinson*, 112 La. 656, 36 So. 639 (1904).

Interpretation of Bequest for Medical Department.

Alexander C. Hutchinson made a residuary bequest of more than \$1,200,000 to the Tulane University of Louisiana at his death on January 14, 1895, "for the sole and exclusive benefit of its Medical Department." In subsequent paragraphs the will recommended and advised the construction of buildings to house a free clinic, dispensary, clinical laboratories, and hospital to include such number of free beds for the destitute poor as the faculty might deem feasible within the limitations of the fund. When relatives of the deceased sued to recover the legacy, alleging non-fulfillment of the conditions imposed by the testator, in that the legatee had never constructed any clinic, hospital, or clinical laboratory nor established or maintained any beds for the destitute poor, it was held that the first of the four paragraphs of the will devoted to this bequest was alone dispositive, and vested unconditional title in the university; and that the subsequent paragraphs were merely advisory in character, and not conditions imposed by the testator on the legatee. *Hutchinson v. Tulane University*, 171 La. 653, 131 So. 838 (1930).

Interpretation of Will Bequeathing Scholarships.

Joseph A. Breaux bequeathed the income of the residue of his estate (about \$800,000) in equal parts to Tulane University and Loyola University, for scholarships of \$1000 to run for four years and then be granted to new beneficiaries and so on indefinitely. The income was sufficient to provide fourteen such scholarships at each university. The will was not explicit on the subject of the method of awarding the scholarships, but designated two named trustees "to see to safety and investment" of the fund. When these trustees refused to pay over the income of the fund unless they were given a voice in the awarding of the scholarships, it was held that the will evidenced no intent to give the trustees such a power. The will provided that upon the death of either or both of the trustees, their successors should be appointed by "the gentlemen of the faculties", thus evidencing faith in the universities. *Succession of Breaux*, 175 La. 269, 143 So. 246 (1932).

VANDERBILT UNIVERSITY

NASHVILLE, TENNESSEE

A privately controlled, co-educational university, with the number of women students limited. Chartered in 1872, upon the initiative of certain conferences of the Methodist Episcopal Church, South. Endowment in 1930, approximately \$19,000,000. Total annual income about \$1,400,000, of which about \$400,000 was from student fees.

CHARTER OF THE VANDERBILT UNIVERSITY¹

(Originally Central University)

DECREE ENTERED AUGUST 6, 1872. (MINUTE BOOK W, PAGE 267)

THE CENTRAL UNIVERSITY OF THE
METHODIST EPISCOPAL CHURCH,
SOUTH. EX PARTE. }

This matter came on this day to be heard before the Hon. Nathaniel Baxter, Judge, etc., of the Circuit Court of Davidson County, sitting by interchange with the Hon. Edward H. East, the Chancellor presiding, but who was incompetent to preside and hear this cause, for the reason that he was interested herein; and the same was heard upon the petition of W. C. Johnson, Robert J. Morgan, Smith W. Moore, and Milton Brown, citizens and residents of the State of Tennessee and representatives of the Memphis Conference of the Methodist Episcopal Church, South; and Alexander L. P. Green, Jordan Stokes, David C. Kelley, Edward H. East, David T. Reynolds, and Robert A. Young, citizens and residents of Tennessee and representatives of the Tennessee Conference; and Landon C. Garland, a citizen and resident of Mississippi, and Philip Tuggle, a citizen and resident of Tennessee, the two latter representing the North Mississippi Conference; and James H. McFerrin and John M. Steel, citizens of the State of Arkansas and representatives of the White River Conference; and Christopher D. Oliver and William Dickson, citizens of the State of Alabama and representatives of the North Alabama Conference; and Edward Wadsworth and W. M. Byrd, citizens of the State of Alabama and representatives of the Alabama Conference; and W. L. C. Hunnicutt and Thomas Christian, citizens of the State of Mississippi and representatives of the Mississippi Conference; and James L. Borden and William H. Foster, citizens of the State of Louisiana and representatives of the Louisiana Conference; and Andrew Hunter and J. L. De Yampert, citizens of the State of Arkansas and representatives of the Little Rock Conference; and it appearing to the court that said persons, in their said petition, prayed to be incorporated under the name and style of THE CENTRAL UNIVERSITY OF THE METHODIST EPISCOPAL CHURCH,

¹From a pamphlet entitled, *Charter and Amended Charter, Vanderbilt University*. Published by the University.

SOUTH,² the object and plan of said university having been fully set forth in resolutions passed by the delegates of said conferences, at a convention of the same, held in the city of Memphis, on the 24th, 25th, 26th, and 27th of January, 1872, and which resolutions are in words and figures as follows:³

"Resolved by the Convention, 1. That measures be adopted looking to the establishment, as speedily as practicable, of an institution of learning of the highest order, and upon the surest basis, where the youth of the church and country may prosecute theological, literary, scientific, and professional studies to an extent as great, and in a manner as thorough, as their wants demand.

"2. That the institution shall be called the Central University of the Methodist Episcopal Church, South.

"3. That it shall consist, at present, of five schools, or departments—viz., a theological school, for the training of our young preachers, who, on application for admission, shall present a recommendation from a quarterly or annual conference and shall have obtained a standard of education equal to that required for admission on trial into an annual conference; and instruction to them shall be free, both in the theological and the literary and scientific departments. Secondly, a literary and

²Amended, 1873, changing name to "The Vanderbilt University" and reducing the number of trustees to two from each cooperating conference. *Ibid.* pp. 6-7.

³Amended, 1873, the "Amended Charter" reading as follows:

This matter came on this day to be heard before the Chancellor upon the petition heretofore filed, and publication of the matter thereof having heretofore been made according to the statutes in such cases made and provided, the court is pleased to order and decree that the name and style of The Central University of the Methodist Episcopal Church, South, a corporation heretofore chartered under the constitution and laws of this state as a university of learning, and with all the powers, rights, and privileges of such corporations as are now given and conferred by the laws of the state of Tennessee, or may hereafter be given and conferred, be changed to the name and style of THE VANDERBILT UNIVERSITY, by which name it shall hereafter be known and sue and be sued, hold and receive property, confer degrees, and do any and all things which, by the present and future laws of Tennessee, it may be empowered to do.

It is further decreed that all the rights of property, powers to contract, privileges, immunities, and franchises which heretofore by law, under the decree of this court, were conferred upon the said corporation under the name and style of The Central University of the Methodist Episcopal Church, South, and the property or rights thereof which have heretofore been secured to said corporation, pass to THE VANDERBILT UNIVERSITY, and its assigns and successors, forever, for the purposes of said corporation. And that it have the power to pass by-laws, resolutions, etc., not inconsistent with the laws of the land, and to increase and diminish the number of its trustees and change the name of its schools, and do and perform any and all acts allowable by law to corporations of learning. It is further decreed that the said VANDERBILT UNIVERSITY pay the cost of this proceeding, for which *fi. fa.* issue. *Ibid.* pp. 7-8.

W. F. COOPER, *Chancellor.*

scientific school. Thirdly, a normal school. Fourthly, a law school. Fifthly, a medical school.

"4. That the sum of one million of dollars is necessary in order to realize fully the object desired, and not less than five hundred thousand dollars must be secured as a condition precedent to the opening of any department of the university.

"5. That the location of the university shall be left to the decision of the college of bishops of the Methodist Episcopal Church, South.

"6. That the carrying out of this whole scheme is hereby committed to the persons (herein named before as petitioners), who shall take immediate steps for securing a suitable charter of incorporation, and shall be a board of trust, with power to solicit and invest funds, appoint an agent or agents, and to do whatever else is necessary for the execution of this scheme.

"7. That seven of the board of trustees, at any meeting regularly called, shall constitute a quorum.

"8. That provision be made in the charter for giving a fair representation in the management of the university to any annual conference hereafter co-operating with us.

"9. That the bishops of the Methodist Episcopal Church, South, be, and are hereby, requested to act as a board of supervision of the university or any of its departments, and jointly with the board of trust to elect officers and professors, and prescribe the course of study and the plan of government."

And it further appearing to the court that, upon the filing of said petition, the Clerk and Master of this court caused, by an order at rules, the same to be advertised, in pursuance of the statute in such cases made and prescribed; and it further appearing to the court that no one has appeared and made known any objection to the granting of the prayer of petition, and the court, upon inspection of the designs and objects of said corporation, finds nothing therein contained to be against public policy or good morals, or in conflict with the constitution and laws of the State or of the United States, is pleased to grant the prayer of the same, and doth hereby order and adjudge and decree that the petitioners be declared a body politic and corporate under the name and style of "The Central University of the Methodist Episcopal Church, South," and in that name may sue and be sued, plead and be impleaded, in the courts of this State or of the other States of the Union, or of the United States of America; may have a common seal, which may be altered at pleasure; shall have perpetual succession; may solicit and receive subscriptions, donations, legacies, and devises; may hold real estate and personal property in such amounts as the business of the corporation requires, and may receive the same

by contract, gift, will, or devise, and shall hold the same for the purpose of said incorporation, with all the lawful conditions imposed by the donor; may appoint such subordinate officers and agents as the business of the corporation requires, prescribe their duties, and fix their compensation; may make by-laws not inconsistent with the laws of the land or this charter, or the resolutions of the convention at Memphis, as set out hereinbefore, which resolutions are hereby adopted as a part of this charter,⁴ but shall make all by-laws necessary and proper to carry out the objects of said resolutions, as well as for the management of its property and the regulation of its affairs, and may also have power to pass all by-laws necessary to the use of the powers therein given, or which by law may hereafter be conferred; and all said powers, rights, and privileges, together with such others as are not herein specially given and referred to, are hereby conferred upon said corporation in as full, complete, and ample manner as by the laws of the State the same can or might be; and said corporation shall have the power to confer all the degrees of merit and honor usually conferred by universities. It is further decreed that petitioners pay the costs of this proceeding, and that the Clerk and Master issue to them a certified copy of this decree.

NATHANIEL BAXTER, *Judge*.

APPENDIX

MR. VANDERBILT'S LETTER

To Bishop H. N. McTyeire, of Nashville:

I make the following offer, through you, to the corporation known as the Central University of the Methodist Episcopal Church, South:

First—I authorize you to procure suitable grounds, not less than from twenty to fifty acres, properly located for the erection of the following work:

Second—To erect thereon suitable buildings for the uses of the university.

Third—You to procure plans and specifications for such buildings and submit them to me, and, when approved, the money for the foregoing objects to be furnished by me as it is needed.

Fourth—The sum included in the foregoing items, together with the "Endowment Fund" and the "Library Fund," shall

⁴Amended, 1873, omitting the words, "or the resolutions of the convention at Memphis set out herein, which resolutions are hereby adopted as a part of this charter." *Ibid.* p. 7.

not be less, in the aggregate, than *five hundred thousand dollars* (\$500,000), and these last two funds shall be furnished to the corporation as soon as the buildings for the university are completed and ready for use.

The foregoing being subject to the following conditions:

First—That you accept the presidency of the board of trust, receiving therefor a salary of three thousand dollars per annum and the use of dwelling house, free of rent, on or near the university grounds.

Second—Upon your death or resignation the board of trust shall elect a president.

Third—To check hasty and injudicious appropriations or measures, the president shall have authority, whenever he objects to any act of the board, to signify his objections in writing within ten days after its enactment, and no such act to be valid unless, upon reconsideration, it be passed by a three-fourths vote of the board.

Fourth—The amount set apart by me as an endowment fund shall be forever inviolable, and shall be kept safely invested, and the interest or revenue only, used in carrying on the university. The form of investment which I prefer, and in which I reserve the privilege to give the money to said fund, is in seven per cent, first mortgage bonds of the New York Central & Hudson River Railroad Company, to be registered in the name of the corporation, and to be transferable only upon a special vote of the board of trust.

Fifth—The university is to be located in or near Nashville, Tennessee.

Respectfully submitted,

C. VANDERBILT.

RESPONSE OF THE BOARD

WHEREAS, Mr. C. Vanderbilt, of New York, has offered, through Bishop H. N. McTyeire, to the Central University of the Methodist Episcopal Church, South, the munificent sum of five hundred thousand dollars; and,

WHEREAS, The bishop has this day presented to this board, duly convened, the offer of Mr. C. Vanderbilt, in writing; therefore,

1. *Resolved*, That we accept with profound gratitude this donation, with all the terms and conditions specified in said proposition.

2. *Resolved*, That, as an expression of our appreciation of this liberality, we instruct the committee hereinafter mentioned to ask the honorable chancery court to change the name and style of our corporation from "The Central University of the Methodist Episcopal Church, South," to VANDERBILT

UNIVERSITY, and that the institution thus endowed and chartered shall be from henceforth known and called by this name.

3. *Resolved*, That the Hon. M. Brown, the Hon. E. H. East, and the Rev. D. C. Kelley, D. D., be, and they are hereby, authorized and requested to obtain, at the earliest practicable day, such modifications of our charter as will enable this board to conform its future operations to the conditions aforesaid.

4. *Resolved*, That the secretary is requested to convey to Mr. C. Vanderbilt the sincere thanks of this board, with a copy of these resolutions.

S. W. MOORE,
W. C. JOHNSON.

MR. VANDERBILT'S REPLY

New York, March 31, 1873.

D. C. Kelley Esq., Secretary:

My Dear Sir—Your favor of the twenty-seventh inst., enclosing a resolution of The Central University of the Methodist Episcopal Church, South, passed the twenty-sixth inst., is received and is very satisfactory.

Very respectfully yours, C. VANDERBILT.

JUDICIAL DECISIONS

Subject to New York Inheritance Tax. Vanderbilt University, having submitted no claim to exemption, was held subject to the New York Inheritance Tax upon its receipt of a legacy under the will of William H. Vanderbilt of New York. The court expressly followed the rule laid down in *Catlin v. Trustees of Trinity College*, 113 N. Y. 133, 20 N. E. 864 (1889), holding that exemptions provided for in the Collateral Inheritance Tax Act (New York Laws, 1887, chapter 713) did not apply to foreign corporations. *Re Vanderbilt*, 2 Connolly's Surrogate Reports 319, 10 N. Y. S. 239 (1890).

Tax Exemption. The Constitution of the State of Tennessee provides for encouragement of literature and education, and authorizes the Legislature to exempt from taxation property so used. Legislation providing such exemption has been in effect for many years and is embodied in the Code of Tennessee of 1932. This provides exemption of all property except such as may be used in secular business and competing with a like

business that pays taxes to the State. The question arose whether rented property was exempt or subject to taxation under this statute where the income from rentals was used solely for the benefit of the University. When tested in the courts it was held that the renting of real property owned by the University is not a business, and the property is not taxable where its income is devoted to educational purposes. *Vanderbilt University v. Cheney*, 116 Tenn. 259, 94 S. W. 90 (1906).

Composition of the Board of Trust. A convention composed of representatives from certain conferences of the Methodist Episcopal Church, South, took action resulting in the appointment of a Board of Trust instructed to take out a charter for Central University. Upon a petition of its individual members this Board was incorporated. The Board claimed from the beginning that it held under the charter the right to fill vacancies in its own body, but passed a by-law permitting confirmation or rejection of such appointments by the conferences represented in the Board. Later by mutual agreement this privilege was transferred from the annual conferences to the General Board of Education of the whole church. At a later date the General Conference claimed the right to elect members of the Board of Trust, and the College of Bishops claimed visitatorial power over the University, with the right to veto actions of the Board of Trust. These conflicting claims were tested in a law suit that began in 1910, and continued until final settlement by the Supreme Court of the State of Tennessee in 1914. It was held that the General Conference had no right to do more than confirm or reject the election of new members to the Board of Trust, and that the College of Bishops, having declined all official relations to the corporation and asserted no common law right of visitation for nearly forty years after its inception, was thereby estopped from asserting such rights. *State v. Board of Trustees of Vanderbilt University*, 164 S. W. 1151, 129 Tenn. 279 (1914).

Note: In view of the above decision the General Conference of 1914 withdrew from all official relation to Vanderbilt University.

Liability for Injury to Tenant. The exemption from liability for personal injuries extended to charitable organizations

does not extend to the revenues of an office building operated by Vanderbilt University as employment for its endowment funds, so as to afford exemption of such revenues from liability for injury to a tenant of the building through the operation of a defective elevator therein, although a portion of the building is used in connection with the work of the university. *Gamble v. Vanderbilt University*, 138 Tenn. 616, 200 S.W. 510, L.R.A. 1918C 875 (1918).

Interpretation of Will. Thomas E. Mitchell of Georgia left a legacy of \$125,000 value to Vanderbilt University, the net income thereof to be used "according to the best judgment of the Trustees . . . to assist poor, worthy and deserving students, who may be *bona fide* residents of Georgia." A subsequent clause of the same will expressed the testator's desire that the university lend the funds to the selected students, taking interest-bearing notes, "since, in my opinion, such a method of assisting students by loans is better adapted to the formation of character than to make absolute gifts to such students." A legacy of equal amount and on the same terms was also bequeathed to the University of Georgia. Vanderbilt University sought permission to deviate from the express terms of its trust by extending the benefits of the fund to students from other states, showing that tuition and living expenses at the University of Georgia were much lower than at Vanderbilt, so that poor students in Georgia would naturally attend the former; and that after diligent efforts, including the mailing of circulars to its graduates and to high schools located in Georgia, offering to lend the funds at 5% interest, after three years it had been able to lend only about \$2000 to four students, leaving a balance of accumulated income of more than \$24,000. The court held that the terms of the will did not conclusively require the assistance to be given in the form of interest-bearing loans, but merely expressed the donor's preference thereof, leaving to the Trustees full discretion as to whether they would offer loans or absolute gifts. Hence there was nothing in the terms of the trust making its literal performance impossible, and the deviation prayed for could not be allowed. *Vanderbilt University v. Mitchell*, 162 Tenn. 217, 36 S. W. (2d) 83 (1931).

UNIVERSITY OF VIRGINIA

CHARLOTTESVILLE, VIRGINIA

A state university for men. Women admitted only to graduate and professional courses. Established in 1819 by act of the legislature and organized according to the plans of Thomas Jefferson, the Rector being official and ceremonial head, but the Chairman of the Faculty being the chief administrative officer. The first president was elected in 1904. The university comprises the College of Arts and Sciences, the Department of Graduate Studies, the Department of Education, the Department of Engineering, the Department of Law, and the Department of Medicine. Endowment in 1930, \$10,000,000. Annual income from all sources, \$2,159,000, of which \$496,000 came from state appropriations. The governing board has authority to compel the attendance of witnesses, a power which is conferred upon but few such boards.

LAWS RELATING TO THE UNIVERSITY OF VIRGINIA

CONSTITUTIONAL PROVISIONS

(Adopted, 1902)

ARTICLE IX

EDUCATION AND PUBLIC INSTRUCTION¹

SECTION 142. Boards of visitors and trustees of educational institutions, how appointed, and term of office. Members of the boards of visitors or trustees of educational institutions shall be appointed as may be provided by law, and shall hold for the term of four years; provided, that at the first appointment, if the board be of an even number, one-half of them, or, if an odd number, the least majority of them, shall be appointed for two years.

STATUTORY PROVISIONS²

CHAPTER 37

UNIVERSITY OF VIRGINIA

SECTION 806. University continued. The University of Virginia shall be continued, and the visitors thereof shall be and remain a corporation, under the style of "the Rector and Visitors of the University of Virginia," and shall have, in addition, to its other powers, all the corporate powers given to corporations by the provisions of chapter one hundred and forty-seven; except in those cases where, by the express terms of the provisions thereof, it is confined to corporations created under the said chapter; and shall also have the power to accept, execute and administer any trust in which it may have an interest under the terms of the instrument creating the trust. The rector and visitors of the University of Virginia shall be at all times subject to the control of the General Assembly. (Code 1887, Section 1541; 1908, p. 379.)

SECTION 807. Appointment of visitors. There shall be ten visitors, one of whom shall be the superintendent of public instruction, and nine of whom shall be appointed by the gover-

¹Michie's *Code of Virginia*, 1930, p. 2100. Published by The Michie Company, Charlottesville, Va., and reprinted by permission.

²*Code of Virginia*, 1930. Section numbers as given in the Code. Only those sections of Chapter 37, *University of Virginia*, and of other chapters, that are fundamental to the control and government of the institution have been reproduced from the Code.

nor. The visitors now in office, or such persons as may be appointed in their stead, are continued therein until their respective terms of office expire, to-wit: such five of them as were so designated by the governor at the time of their appointment until the twenty-eighth day of February, nineteen hundred and thirty, and the other four, or those who shall be appointed to succeed them for the unexpired term for which they are now serving, until the twenty-ninth day of February, nineteen hundred and thirty-two. Within the sixty days preceding the day on which the terms of office respectively of the several members of the board will expire by limitation as aforesaid, the governor, by and with the consent of the senate, shall appoint, to fill the vacancies so to be occasioned, persons whose term of office shall be for four years from that day. And thereafter, within sixty days preceding the day on which the terms of office respectively of the members shall expire by limitation, the governor, by and with the consent of the senate, shall appoint, to fill the vacancies so to be occasioned, persons whose terms of office shall be for four years from the day on which the terms of their immediate predecessors expired.

Vacancies caused otherwise than by the expiration of the term of office shall be filled by the governor for the unexpired term by appointment which shall be subject to ratification or rejection by the senate at the next session of the general assembly. The members of the board shall in all cases continue to discharge the duties of their office after their terms have expired until their successors have been appointed and qualified.

The governor shall appoint at least one visitor in the years in which he has four visitors to appoint, and two visitors in the years in which he has five visitors to appoint, from a list of nine persons, qualified to fill the office of visitors, which list shall be submitted to him, whether he shall have taken office or not, by the alumni association of the University of Virginia not later than the first day of December of the year preceding that in which the terms of said visitors are to begin, and visitors so appointed from said list shall be eligible for reappointment only in case their names appear on the list which shall be current at the time when their respective terms expire. The said list shall be made up by the alumni association of the University of Virginia in such manner as it shall prescribe, and in the absence of other applicable provisions shall be named by the board of managers of the said association; and the list of eight persons before the governor at the time of the passage of this act may be enlarged by the board of managers of the said alumni association by the addition of two names, and, as so enlarged, shall be the list used by the governor in making appointments in the year nineteen hundred and thirty.

If the said alumni association of the University of Virginia shall in any such year fail to submit such a list in accordance with the provisions hereof, the appointments of visitors whose terms would commence in the year next succeeding the date on or before which said list should have been submitted, shall be made just as if said association had not been empowered to submit such a list.

Whenever a vacancy occurs among the three members of the visitors appointed by the governor as nominees of said alumni association, otherwise than by expiration of term, the governor shall certify this fact to the alumni association and the association may submit a list of nine persons, qualified to fill the office of visitors, from whom the governor shall select one, to fill such vacancy, as the nominee of the alumni association, which list shall have the same effect as lists filed as herein otherwise provided; but, upon failure of the alumni association to furnish such list within fifteen days from the date such vacancy has been certified to the association by the governor, the governor shall appoint a nominee of the alumni association from the list last previously submitted so as to have at least three visitors who shall be nominees of the alumni association as aforesaid. (Code 1887, Section 1542; 1924, p. 145; 1930, p. 80.)³

³Synopsis of earlier statutory provisions for the government of the University of Virginia:

An act passed February 21, 1818 (*Early History of the University of Virginia* by J. W. Randolph, pp. 427-432. Richmond: 1856) provided, among other things, for the establishment of "a University, to be called 'The University of Virginia,' wherein all the branches of useful science shall be taught." The University was to be under the government of thirteen Visitors, to be appointed by the President and Directors of the Literary Fund. The term of office was set at seven years. This act created a Board of Commissioners, numbering twenty-four, to select a site for the University.

Following the report of the Commissioners, provided for in the Act of 1818, "An Act Establishing the University" was passed January 25, 1819 (*Ibid.* pp. 447-50). This Act provided for seven Visitors to be appointed by the Governor, with the advice of the Council, for terms of one year, the same or others to be appointed each February and the date for the first meeting to be prescribed by the Governor and Council. The Visitors were authorized to appoint a "Rector of their own body, to preside at their meetings, and a secretary to record, attest and preserve their proceedings." The Rector and Visitors were made a body corporate under the style and title of "The Rector and Visitors of the University of Virginia." They were required to report annually to the President and Directors of the Literary Fund, which body was to transmit the report to the Legislature.

The *Code of Virginia*, 1849, (p. 382) shows that at that time the law provided for the appointment of eight Visitors by the Governor, "two from each grand division of the state," for terms of one year. They were to report annually through the "second auditor" to the General Assembly.

Code of Virginia, 1860, (p. 429) shows that by an Act of 1852 it was provided that the Governor appoint nine Visitors, "three of whom to be selected from the divisions of the state in which the university is situated, so as to allow of the formation of the usual executive committee in its vicinity for the transaction of business in the recess of the board, and two from each of the other grand divisions of the state. . . ." The term of office was one year.

SECTION 808. When office of visitor deemed vacant. If any visitor fail to perform the duties of his office for one year, without sufficient cause shown to the board, the said board shall, at their next meeting after the end of such year, cause the fact of such failure to be recorded in the minutes of their proceedings, and certify the same to the Governor, and the office of such visitor shall be thereupon vacant. If so many of such visitors fail to perform their duties that a quorum thereof do not attend for a year, upon a certificate thereof being made to the Governor by the rector, or any member of the board, or by the chairman of the faculty, the offices of all visitors so failing to attend shall be vacant. (Code 1887, Section 1543.)

SECTION 809. Meeting of board of visitors; quorum; rector; secretary. The board of visitors shall meet at the University once a year, and at such other times as they shall determine, the days of meeting to be fixed by them. Five members shall constitute a quorum. At their first meeting after the twenty-eighth day of February, in the year nineteen hundred and twenty-two, and every fourth year thereafter, they shall appoint from their own body a rector, who shall preside at their meetings. At the same time they shall appoint a secretary to the board. In the absence of the rector or secretary at any meeting, the board may appoint a president or secretary pro tempore, and vacancies in the office of rector or secretary may be filled by the board for the unexpired term. Special meetings of the board may be called by the rector or any three members. In either of said cases, notice of the time of meeting shall be given by the secretary to every member. (Code 1887, Section 1544.)

SECTION 810. The executive committee. At every regular annual meeting of the board they shall appoint an executive committee for the transaction of business in the recess of the board, not less than three nor more than five members, to serve for the period of one year or until the next regular annual meeting, whose duty it shall be to meet at the university at least two days before the regular annual meeting of the board and on some day not later than the fifteenth day of October in every year. (1887, p. 132.)

SECTION 811. Duties of board; water supply; appointment and removal of president and professors; appointment of bursar and proctor. The said board shall be charged with the care and preservation of all property belonging to the university. They shall appoint a president, with such duties as may be prescribed by said board, and they shall ap-

Code of Virginia, 1887, Section 1542, shows that by an Act of 1885 the term of office of the Visitors was changed to four years.

Pollard's *Supplement to the Code of Virginia*, 1910, p. 692, shows that by an Act of 1906 the Superintendent of Public Instruction was added, *ex officio*, as a member of the Board of Visitors, thus making the Board ten in number.

point as many professors as they deem proper, and, with the assent of two-thirds of the whole number of visitors, may remove such president or any professor. They may prescribe the duties of each professor, and the course and mode of instruction. They may appoint a bursar and proctor, and employ any other agents or servants, regulate the government and discipline of the students, and the renting of the hotels and dormitories, and, generally, in respect to the government and management of the university, make such regulations as they may deem expedient, not being contrary to law. The said board shall, before making appointment of such president, proctor or professor, give notice thereof for at least thirty days by an advertisement published for four successive weeks in some daily newspaper of general circulation published in the city of Richmond, Virginia, of the time when and the place where such appointment will be made. To enable the proctor and visitors of the university to procure a supply of water, and to construct and maintain a system of waterworks, drainage, and sewerage for the university they shall have power and authority to acquire such springs, lands, and rights of way as may be necessary, according to the provisions of chapter one hundred and seventy-six. (Code 1887, Section 1546; 1902-3-4, p. 116.)

SECTION 812. Confirmation of certain contracts. All proceedings heretofore had before any court or in any clerk's office, and all contracts heretofore entered into for acquiring land by condemnation or purchase, for any of the purposes mentioned in the preceding section, are hereby confirmed and made valid. (Code 1887, Section 1547.)

SECTION 813. Testimonials to students. They shall examine into the progress of the students in each year, and shall give to those who excel in any branch of learning such honorary testimonials of approbation as they deem proper. (Code 1887, Section 1548.)

SECTION 814. Visitors' expenses. Such reasonable expenses as the visitors may incur in the discharge of their duties shall be paid out of the funds of the university. (Code 1887, Section 1549.)

SECTION 815. Their annual report. They shall, before the first day of October, annually, deliver to the Second Auditor a report to the General Assembly of the progress of the university, its receipts and disbursements during the year ending on the first day of July preceding, and the amount of salary received by each professor, including fees received from the students. (Code 1887, Section 1550.)

SECTION 816. Salary of president and professors; fees. The president shall receive a stated salary, and each of the professors shall receive a stated salary, and may also receive

such additional compensation out of the fees for tuition and other revenues of the university as the visitors may from time to time direct. (Code 1887, Section 1551; 1897-8, p. 923; 1902-3-4, p. 116.)

SECTION 817. What branches of learning to be taught. The following branches of learning shall be taught at the University, that is to say: the Latin, Greek, Hebrew, French, Spanish, Italian, German, and Anglo-Saxon languages; the different branches of mathematics, pure and physical; natural philosophy, chemistry, mineralogy, including geology; the principles of agriculture; botany, anatomy, surgery, and medicine; zoology, history, ideology, general grammar, ethics, rhetoric, and belles-lettres; civil government, political economy, the law of nature and of nations and municipal law. (Code 1887, Section 1552.)

SECTION 817a. Scholarships. The rector and board of visitors of the University of Virginia are hereby authorized to offer one scholarship from each school division of the State which scholarship would entitle the holder to tuition in the college, room rent, light, heat, and attendance free of charge. Before any person shall be eligible for one of the scholarships as provided in this act he shall file with the school superintendent of the school division in which he resides an affidavit confirmed by the written statement of two witnesses, setting forth his age, residence and occupation and the further fact that neither said applicant nor his parents or guardian is able to pay for tuition, room rent, light, heat and attendance in addition to paying the other expenses of attending the university. In case two or more applicants comply with the conditions outlined herein, then the division superintendent of schools shall hold a competitive examination prepared by the president of the university and award the scholarship to the applicant making the highest grade. One applicant from each school division shall be appointed by the division superintendent who shall send the name of the applicant and the affidavit to the registrar of the university. In case no appointment is reported by the division superintendent of any division prior to September first each year, the president of the university shall have authority to fill the vacancy from that school division by appointment from the State at large. The same qualifications for entrance to the university shall be required of holders of this scholarship as of other students.

Every student receiving a State scholarship, who shall have remained at the university during a period of two years or more, shall act as an administrative officer in the school system of the State, or as teacher in some school in the State for two scholastic years after leaving the university, and said student shall be

required to discharge said obligation within four years after leaving the institution. Unless said student shall fulfill his said obligation, he shall be deemed to have violated his contract, and authority is hereby given the university to collect by law such amount as the student has received from the scholarship. (1918, p. 538.)

SECTION 818. Payment of bonds of the University. For the payment of the bonds, with the interest thereon, issued in pursuance of the act entitled "An act to authorize the rector and board of visitors of the University of Virginia to issue bonds to pay off and discharge their floating debt and maturing obligations," approved March twenty-eighth, eighteen hundred and seventy-one, not only the current revenue of the university, but also the property now held by the Commonwealth for the purposes of the said university, shall continue liable. (Code 1887, Section 1553.)

SECTION 819: Repealed by Acts of 1928, p. 1032.

SECTION 820. Payment of interest on debt of the University; sinking fund. Out of the appropriation made by the General Assembly for the support of the University of Virginia, there shall be first set apart, annually, a sum sufficient to pay the interest accruing on the existing interest-bearing debt of the University, and to constitute a sinking fund for the liquidation of the principal of the same; and the said sum shall be applied to no other purpose or object whatever. (Code 1887, Section 1555.)

SECTION 821. How debts contracted. It shall not be lawful for the rector and visitors of the University of Virginia to issue its obligations, to be secured by deed of trust on its real estate, without the consent of the General Assembly previously obtained. (Code 1887, Section 1556; 1908, p. 380.)

SECTION 822. Donations; how invested, etc. Any person may deposit in the treasury of this State, or bequeath money, stocks, or public bonds of any kind to be so deposited, or grant, devise, or bequeath property, real or personal, to be sold and the proceeds to be so deposited, in sums not less than one hundred dollars, which shall be invested in bonds or certificates of debt of the State of Virginia, or the United States, or any other State thereof, for the benefit of the university, and in such case the interest or dividends accruing on such stocks, certificates of debt or bonds, shall be paid to the rector and visitors of the university, to be by them appropriated to the general purposes thereof, unless some particular appropriation shall have been designated by the donor or testator, as hereinafter provided. (Code 1887, Section 1557.)

SECTION 823. When for special objects, how applied, etc. If any particular purpose or object connected with the univer-

sity be specified by the donor at the time of such deposit, by writing filed in the Treasurer's office (which may also be recorded in the clerk's office of the circuit court of Albemarle county, as a deed for land is recorded), or in the will of such testator, the interest, income, and profits of such fund shall be appropriated to such purpose and object, and none other; or, if the donor or testator shall so direct in such writing or will, the interest accruing on such fund shall be reinvested by the Treasurer of the Commonwealth every six months, in the manner prescribed in the preceding section, and the interest thereon be, from time to time, reinvested in like manner for such period as such writing or will shall prescribe, not exceeding thirty years; and at the expiration of the time so prescribed or thirty years, whichever shall happen first, the fund, with its accumulations, shall be paid over to the rector and visitors of the university, or the interest, income, and profits thereafter accruing upon the aggregate fund shall be paid to them as the same shall accrue, according as the one or the other disposition shall be directed by such writing or will, and in either case the same shall be appropriated and employed according to the provisions of such writing or will, and not otherwise; and the rector and visitors of the university shall render to the General Assembly, at each regular session, an account of the disbursement of any funds so derived. (Code 1887, Section 1558.)

SECTION 824. Donations irrevocable; disposition thereof, if refused. Such donations shall be irrevocable by the donor or his representatives; but if the authorities of the university, within one year after being notified thereof (which it shall be the duty of the Treasurer to do immediately upon the making of such deposit with him), shall give notice, in writing, to the Treasurer, that they decline to receive the benefit of such deposit, the same, with whatever interest and profits may have accrued thereon, shall thereupon be held subject to the order of such donor or his legal representatives; and if at any time the object for which such donation or deposit is intended, by the legal destruction of the university, or by any other means, shall fail, so that the purpose of the gift, bequest, or devise, shall be permanently frustrated, the whole fund, principal and interest, then unexpended, as it shall then be, shall revert to and be vested in the said donor or his legal representatives. (Code 1887, Section 1559.)

SECTION 825. Reservation of nomination by donor. If the donor shall, in such writing, filed as aforesaid, reserve to himself or to any other person the power to nominate to any professorship, scholarship, or other place or appointment in the university, or to do any other act connected therewith, and he or such other person shall fail at any time for six months to make such

nomination in writing, or to do such other act, the board of visitors may proceed to make such appointment or to do such act at their discretion. (Code 1887, Section 1560.)

SECTION 826. State to be trustee of donations; liability of Treasurer. The State of Virginia is hereby constituted the trustee for the safe keeping and due application of all funds which may be deposited in the treasury in pursuance of section eight hundred and twenty-two. The Treasurer and the sureties in his official bond shall be liable for the money or other funds deposited as aforesaid, and separate accounts of each such deposit shall be kept by the accounting officers of the State in the same manner as of other public funds. (Code 1887, Section 1561.)

CHAPTER 45

General Provisions as to Colleges and Academies and Other Institutions; The Miller Manual Labor School and The Medical College of Virginia.

SECTION 986. Annual reports. It shall be the duty of the president or chairman of the board of visitors or trustees of every State institution which is educational in its character to cause to be made out by the superintendent, president, principal, or other proper officer of such institution, and forwarded to the office of the Superintendent of Public Instruction on or before the first day of October of each year a report for the year ending the thirtieth of June preceding. Said report shall set forth the condition and progress of said institutions; the number of professors, assistant teachers, and other officers, and the compensation of each; the whole number of students in attendance; the courses of instruction, academic, professional, or technical; the means and methods of instruction; the number of students in the different classes; the terms of tuition; the number of students admitted free of charge for tuition; the kind and amount of all funds and endowments yielding an income; the annual income from all sources, and the items thereof; the amount of expenditures, and the items thereof; and such other information as may be deemed necessary to a full exhibit of the affairs and conditions of said institutions. Said reports shall be embodied in the annual report of the Superintendent of Public Instruction to the Board of Education, to be by the president of said board laid before the General Assembly of Virginia. (Code 1887, Section 1637; 1887-8, p. 12; 1902-3-4, p. 389.)

SECTION 986a. Conference of heads of certain institutions. The heads of tax-supported institutions of higher learning shall confer with each other, with the rectors or chairmen of the governing boards of said institutions, with the superintendent of public instruction and the State board of education, under the direction of the governor, for the purpose of coordinating their

educational activities and eliminating all unnecessary duplications therein. The conferees shall report to the general assembly of nineteen hundred and thirty a plan defining the educational scope and activity of each institution and means for their coordination. Pending such report, said institutions shall eliminate all courses of study for which there is an unusually small demand and which are not essential for advanced instruction or full departmental programs; and no institution shall establish or inaugurate any school or department which duplicates in whole or in part any school or department existing in any other tax-supported institution, but nothing herein shall be construed as an approval of unnecessary duplications that may now exist. (1928, pp. 981, 982.)

SECTION 988. Expenses of visitors. The boards of visitors of the several educational institutions owned and controlled by the State, shall receive their actual expenses (itemized) incurred in the discharge of their duties in attending the meetings of said boards. (1891-2, p. 1089; 1902-3-4, p. 389.)

SECTION 989. Penalty, if report not made. If no such report required by section nine hundred and eighty-six is made from any college or academy which receives any portion of the revenue of the literary fund, or to which any loan has been made out of the said fund, the Second Auditor shall withhold (until the report is made) the payment of such portion of the literary fund, or proceed to enforce payment of the said loan. (Code 1887, Section 1638; 1902-3-4, p. 389.)

SECTION 992. Cancellation of coupon bonds. All consol coupon bonds, with the coupons attached, so surrendered in exchange shall be cancelled by the treasurer of the State, in the presence of the commissioners of the sinking fund, at the time such exchange is made, and be carefully preserved in his office. The Second Auditor and the Treasurer shall preserve lists of the consol coupon bonds and coupons so surrendered. (Code 1887, Section 1641; 1902-3-4, p. 389.)

SECTION 992 (1). Authority given schools to sell certificates for dormitories. Subject to the approval of the State board of education first obtained, the governing boards of the University of Virginia, the Virginia Agricultural and Mechanical College and Polytechnic Institute, the college of William and Mary in Virginia, the State Teachers Colleges at Farmville, Radford, Harrisonburg, and Fredericksburg, the Virginia Military Institute, and the Virginia Normal and Industrial Institute are hereby severally authorized, through the commissioners of the sinking fund, to issue and sell certificates of indebtedness in the names and on behalf of their institutions, respectively, to raise funds for dormitory construction purposes, subject to the conditions and limitations hereinafter set out. (1926, p. 829.)

SECTION 992 (12). Money used only for dormitories; furnishings. The moneys made available by this act to the institutions named in this act shall be used only for the construction of dormitories. All such dormitories shall be furnished by donations, gifts, or otherwise and shall be so kept furnished until the certificates issued have been retired. (1926, p. 831.)

SECTION 993. Scholarships. The corporate authorities of all educational institutions in the State may establish scholarships in their respective institutions, under such regulations as they may prescribe. (Code 1887, Section 1642; 1902-3-4, p. 389.)

SECTION 994. Investment of funds therefor. Whenever any person shall deposit in the treasury of the State, or bequeath money to be so deposited, or devise or bequeath property to be sold and the proceeds to be so deposited, for the benefit of any such institution, to such an amount that the interest thereof will be sufficient to educate and maintain thereat one or more cadets or students, the said fund shall be invested in State bonds, in the name and for the benefit of said institution. (Code 1887, Section 1643; 1902-3-4, p. 389.)

SECTION 995. Donations irrevocable; right of nomination by donor. Such donation shall be irrevocable, but the donor, or his heirs, or their guardian, if they be under twenty-one years of age, shall have the right to nominate and place in such institution one or more cadets or students, according to the regulations aforesaid. (Code 1887, Section 1644; 1902-3-4, p. 389.)

SECTION 996. Provision, if donor fail to nominate. If such donor, or his heirs, or such guardian, shall fail for one year to nominate as aforesaid, the said board of visitors, trustees, or corporate authorities may appropriate the income of the said fund to the education and maintenance of indigent cadets or students, to be selected by them from the State at large. (Code 1887, Section 1645; 1902-3-4, p. 389.)

SECTION 997. Scholarships by alumni. The society of alumni of any institution aforesaid may provide for and maintain a scholarship therein, by annual contributions, under such regulations as may be prescribed as aforesaid. (Code 1887, Section 1646; 1902-3-4, p. 389.)

SECTION 998. Who prohibited from making contracts with State institutions. No person who is a member of any board of visitors of any State institution, or an employee or agent thereof, or a trustee of any public trust or fund, or a salaried officer of any such State institution, or of any such public trust or fund, shall contract, or be interested in any contract, with such institution, or with the governing authority of such public trust or fund in any manner of form, for furnishing supplies, or for performing any work for said institution, or

for said governing authority of said trust or fund. Any person violating the provisions of this section shall be fined not exceeding five hundred dollars. (Code 1887, Section 1647; 1902-3-4, p. 389.)

SECTION 1003a. Course of instruction at University of Virginia, the College of William and Mary, the Virginia Agricultural and Mechanical College and Polytechnic Institute, the Virginia Normal and Industrial Institute, and the several State normal schools for women. Whereas, it is desirable to make it possible for young men and women to secure the training offered in institutions of higher learning in a briefer time and thus permit them at an earlier age to assume the responsibilities of citizenship; and,

Whereas, it is especially necessary to furnish added facilities for the preparation of teachers in the public school system, the training of teachers in the profession being a most important factor in teacher-training; therefore,

Be it enacted by the general assembly of Virginia, That the University of Virginia, the College of William and Mary, the Virginia Agricultural and Mechanical College and Polytechnic Institute, the Virginia Normal and Industrial Institute, and the several State normal schools for women, be placed on the year-round basis of instruction as soon as their financial resources will warrant, and that the summer term be organized on the basis of a quarter of the year's work of equal grade and degree credit with the work of any other quarter. (1920, p. 73.)

CHAPTER 45A

LIBERAL ARTS COLLEGE FOR WOMEN

SECTION 1003m. Establishment. There shall be established at some point more than thirty miles distant from the University of Virginia, a liberal arts college for women. (1930, p. 114.)

SECTION 1003n. Affiliation with University of Virginia. Unless otherwise provided by law, the college shall be affiliated with the University of Virginia as an integral part thereof, shall be under the general supervision and control of the board of visitors of the University of Virginia, and the president of the university shall be president of the said college. (Id.).

Note.—The commission appointed under the provisions of the acts of the general assembly of Virginia, approved February twenty-eighth, nineteen hundred and twenty-eight, to study the question of establishing a liberal arts college for women was continued with all the powers and authority by the Act of 1930, p. 114, with the further power and authority to negotiate and enter into an agreement or agreements with any person, cor-

poration, or institution with a view to securing a suitable site and buildings for the college; but the act provided that any agreement so made shall before becoming effective be submitted to and approved by the general assembly. The commission was directed to collect and assemble such information as may be presented to it as to the various locations and sites proposed to it, including the capital and operating costs involved, and report to the next regular session of the general assembly, its recommendation as to the location of the college, without restriction to one of the present State teachers' colleges, or any existing institution, and at the same time report the probable cost to the State of the establishment, equipment, and operation of the said college, and its recommendations as to a plan of government for the college, together with any other or further recommendations designed to effectuate the purpose of this act. The chairman of the commission was directed to mail to each member of the general assembly, a copy of the commission's report, on or before December first, nineteen hundred and thirty-one.

SECTION 1003o. Standards of admission and graduation; degrees. The standards of admission and graduation, for students of the liberal arts college for women shall be the same as those from time to time prescribed by the board of visitors of the University of Virginia, and the same undergraduate academic degrees shall be conferred in the said college as those conferred in the college of arts and sciences of the University of Virginia. (Id.)

SECTION 1003p. Tuition fees. Students from Virginia and elsewhere may be admitted to the college for women upon the payment of reasonable tuition fees, which shall not for Virginia students be in excess of the tuition fee charged to Virginia students in the college of arts and sciences of the University of Virginia. (Id.)

CHAPTER 47

BOARDS OF DIRECTORS AND VISITORS OF STATE INSTITUTIONS

SECTION 1096. Visitors to the institutions of this State may investigate the management of their institution or the conduct of any of its officers or employees. Whenever any board of visitors to any of the institutions of this State now in existence or that may hereafter be created deem it necessary or expedient to investigate the management of their institution or the conduct of any of its officers or employees, such board, or a committee of its members selected by the board, shall have the power and authority to send for persons and papers or to order the attendance of witnesses and compel their attendance as is

now conferred upon a committee appointed by the General Assembly or either branch thereof by section three hundred and three. The oath to be taken by any witness examined by such board or committee may be administered by the president or the presiding officer of the board, chairman of its committee, or the clerk or secretary of the board or committee. All expenses incurred in summoning or in the attendance of such witness shall be paid out of the funds of the institution whose board made or ordered the investigation. (1895-6, p. 217.)

SECTION 1097. Expenses of boards of hospitals and visitors of institutions of learning. The board of directors of the several State hospitals and the boards of directors of the various institutions of learning receiving aid from the State shall receive their actual expenses (itemized) incurred in the discharge of their duties in attending the meetings of said boards or committees. No mileage, per diem, or other compensation whatever shall be allowed. (1897-8, p. 137.)

SECTION 1098. Expenditures by boards in sending representatives before legislature prohibited; exception. The officers of no university, college, school, hospital, colony or other institution or board maintained in part or in whole by the State shall spend or appropriate any money or moneys for the purpose of sending any member of the board or officials of such institution or other person to the General Assembly, or any committee thereof, for the purpose of advocating in any way any appropriation for any institution supported in whole or in part by the State of Virginia.

Except, that when any committee of the General Assembly desires information in regard to the needs of any State institution it may by proper resolution so determine, and request that any institution or board send one or more competent persons to give the information desired, and the expense thereof may be appropriated and paid out of the funds appropriated by the State for the support of that institution. (1914, p. 86.)

SPECIAL ACTS

Note: The following two special acts, not included in the Virginia Code of General Laws, deal with matters of importance to the University of Virginia.⁴

Chapter 19. An ACT of the general assembly of Virginia that the University of Virginia do accept and be embraced within the benefits of the Carnegie Foundation for the advancement of teaching. Approved February 12th, 1910.

⁴From *Acts of Assembly with Reference to the University of Virginia, 1802-1927*, compiled by Berkeley Minor and James F. Minor and published by the university, 1928. Pages 72 and 78.

Be it resolved by the senate of Virginia (the house of delegates concurring):

"1. Whereas, the rector and visitors of the University of Virginia, at a meeting held at the University of Virginia, on Monday, June 15th, 1908, adopted the resolution following and the said action was approved by the governor of the commonwealth as herein set out, to-wit:

Virginia appreciates the high purpose of Mr. Andrew Carnegie in establishing the Carnegie Foundation for the advancement of teaching. They perceive clearly its far-reaching and benevolent results in advancing the dignity of the teacher's office, in protecting the old age of unselfish public servants, and in increasing the efficiency and promoting the elevation of the standards of American colleges and universities. They, therefore, desire that the University of Virginia shall participate in the benefits of the foundation, and hereby make application for the admission of the University of Virginia into all rights and privileges of the Carnegie Foundation for the advancement of teaching. Approved September the 5th, 1908, Claude A. Swanson, governor of Virginia.

2. That the general assembly of Virginia approve the action of the rector of the University of Virginia and the governor of the commonwealth, as set out in Section one, and the general assembly of Virginia does consent that the University of Virginia accept the benefits of the Carnegie Foundation for the advancement of teaching." Acts 1910, p. 23.

Chapter 271. An ACT to authorize the rector and visitors of the University of Virginia to enter into a contract with Dr. William E. Hopkins of New York city, in regard to a conditional donation, and to enter into contracts of a similar nature with others. Approved March 16, 1916. (H. B. 251).

"1. Be it enacted by the general assembly of Virginia, That the rector and visitors of the University of Virginia be and are hereby authorized to enter into a contract with Dr. William E. Hopkins, of New York city, under the terms of which the said Dr. William E. Hopkins will deliver to the said rector and visitors of the University of Virginia a sum of money not greater than \$35,000 and not less than \$25,000, said sum to be used by said the rector and visitors of the University of Virginia in the erection of a teaching building at the University of Virginia. And during the whole of the natural life of said Dr. William E. Hopkins said the rector and visitors of the University of Virginia shall pay to him in consideration of said donation the sum of \$1200 per annum, but upon the death of said Dr. William E. Hopkins the sum so delivered by him shall become the absolute property of said the rector and visitors of

the University of Virginia, free from any further payment to the estate of said Dr. William E. Hopkins by said the rector and visitors of the University of Virginia, or any claim on the part of said estate against said the rector and visitors of the University of Virginia.

And said the rector and visitors of the University of Virginia are further authorized and empowered to enter into such other contract or contracts for the acceptance by them of sums of money upon which the donor requires as consideration for and as a condition to the gift that an annuity be paid by said donee during the life-time of the donor, or for some other fixed period not exceeding beyond the life of the donor, provided such donation or gift shall become absolute, complete and unconditional upon the determination of the period during which such annuity is to be paid.

Said the rector and visitors of the University of Virginia shall fix the amount of such annuity at a sum not exceeding five per centum upon the principal amount of the donation, and may also impose such other conditions, limitations and restrictions with reference to such donations as they may consider necessary." Acts 1916, p. 491.

JUDICIAL DECISIONS

University Property not Subject to Mechanic's Lien.

The University of Virginia is in the strictest sense a public institution owned, governed and controlled by the state, and its property is dedicated to public uses. Hence a mechanic's lien will not attach to a university building erected in place of one destroyed by fire, although authority has been given by statute to the Rector and Visitors of the university to raise money by deed of trust on the property, to provide for erecting such building. *Phillips v. Rector and Visitors of University of Virginia*, 97 Va. 472, 34 S.E. 66, 47 L.R.A. 284 (1899).

WABASH COLLEGE

CRAWFORDSVILLE, INDIANA

A privately endowed college of Arts and Sciences for men. Chartered as Wabash Manual Labor College and Teachers' Seminary in 1834. Name changed to Wabash College in 1851. Endowment in 1930, \$2,182,000. Total annual income about \$210,000.

THE CHARTER OF WABASH COLLEGE, WITH AMENDMENT AND SUBSEQUENT ACTS¹

An act for incorporating the Wabash Manual Labor College and Teacher's Seminary.

SECTION I. *Be it enacted by the General Assembly of the State of Indiana.*

That John Gilliland, James Thomson, Jacob Angle, David Clark, William R. Winton, Robert C. Gregory, E. O. Hovey, T. A. Howard, James A. Carnahan, Andrew Ingram, M. M. Post, Williamson Dunn, L. G. Bell, Samuel Merrill, J. S. Thomson and S. J. Lowery, and their successors in office, be and they are hereby constituted, and declared, to be a body corporate and politic, by the name and style of the Wabash Manual Labor College, and Teacher's Seminary and by that name they shall have perpetual succession.²

This body corporate or Board of Trustees shall have power to appoint a Faculty in said College, consisting of a President, professors, and tutors, as the necessities of the institution may demand, and the Faculty so appointed by and with the approbation of the Board of Trustees, shall have power to grant and confer such degrees in the liberal arts and sciences as are usually granted and conferred in other Colleges in the United States: *Provided, however,* that no degrees shall be conferred or diplomas granted, except to students who have acquired the same proficiency in the liberal arts and sciences as is customary in other Colleges in the United States.

The Board of Trustees shall also have power to contract and be contracted with; to acquire, hold, enjoy, and transfer property, real or personal, in their corporate capacity; to make, have and use, a common seal, and the same to alter at pleasure, and be sued, plead, and be impleaded, in any court of law, or equity; to receive, and accept, of any grant, gift, donation, bequest, or conveyance, by any person, company or corporation, of any property, real or personal; and to hold, and enjoy, and dispose of the same, as may be deemed best for the interests of said College; to make, ordain, establish and execute, such by-laws, rules and ordinances not inconsistent with the constitution and laws of the United States, or of this State, as they shall deem necessary for the welfare of said institution; and to do all other acts, in pursuance thereof, necessary for the prosperity of said College.

¹From a copy of the original charter and subsequent amendments supplied by President L. B. Hopkins, April 12, 1932.

²Amended, 1851, changing the name to Wabash College.

Provided, it shall not be lawful for said corporation to hold, or be the owner of, real estate exclusive of improvements exceeding in value ten thousand dollars; and if by donation, devise, or otherwise, it should become the legal or equitable owner, of real estate of greater value, the same shall be sold by said corporation, so soon as the value of said donation or devise can be obtained.³

And that no particular religious sect, or particular person, shall have preference in their admission to the privileges of this institution.

SECTION II. The following shall be the fundamental laws of said institution, to-wit: The board shall never consist of more than sixteen members, of whom six, when regularly convened shall constitute a quorum, for the transaction of business.

The board shall at their first meeting, after the act of incorporation, divide themselves into four equal classes, the first of which shall go out of office at the close of the first year, and the vacancies be filled by new election; the second at the close of the second year in like manner, the third at the close of the third year, and the fourth at the close of the fourth year, and the vacancies be filled by new elections immediately, so that ever afterwards one-fourth of the board shall annually go out of office, and the vacancies be filled by an annual election. The annual election of Trustees shall be conducted as follows, to-wit:

Three weeks prior to the holding of such annual election, due notice shall be given by the trustees, by advertisement in a newspaper published in the county where said College is situated, if any be there published, if not in some newspaper published in one of the adjacent counties, nearest thereto, giving notice of the time and place of holding said election.

The contributors to said College, who may attend said meeting, shall then proceed to ballot for four Trustees, and any person having a right to vote, not attending, may vote by proxy.

Each contributor shall be entitled to one vote for every ten dollars contributed, and paid in toward said institution, until said sum exceeds fifty dollars; then one vote for every twenty-

³Amended, 1851, increasing the maximum holdings permitted to the value of fifty thousand dollars and exempting the property of the College from taxation. An Act passed, February 28, 1883, specifically limited the tax exemption to real estate not exceeding three hundred and twenty acres, to buildings and lands in which the buildings stood, not exceeding forty acres.

An Act passed, March 9, 1885, gave any University or College incorporated by and under the laws of the State of Indiana, the right to hold real estate "not to exceed in value the sum of five hundred thousand dollars, exclusive of the realty used and occupied for University and College grounds and buildings." It was further provided in this act that "all such real estate shall be disposed of within twenty years after the same has been acquired."

five dollars, until the sum exceeds one hundred dollars, and for all over one hundred dollars, one vote for every fifty dollars; and the four persons receiving a majority of the votes given, shall be considered duly elected.

The Board shall have the power at any of their meetings to fill vacancies, which may occur in their body by death, resignation, removal, or a failure of the contributors at any time to assemble and elect trustees as above provided. These elections shall all be by ballot.⁴

The first meeting of the Board of Trustees shall be at Crawfordsville, on Tuesday, the twenty-fifth of March, eighteen hundred and thirty-four, and the annual election for Trustees shall be at such a time in the month of March and at such place as may be agreed upon by the Board at each preceding annual election.⁵

SECTION III. To promote the health of students and diminish the expense of their education the Board shall make such arrangements that those students who desire it may be exercised and instructed, in some species of agricultural or mechanical labor.

SECTION IV. The Board of Trustees shall make it one of the first, and at present the most prominent object, in their efforts, to promote literature—to provide the means for conducting an English scientific department, in the institution with special reference to the qualifications of teachers, of common schools, and further, the Board shall make provision for a department preparatory, to the college classes, so long as such department may be found necessary.⁶

⁴Amended, 1851, empowering the trustees to "fill all vacancies in their own body."

Amended, 1855, by a general act permitting any incorporated educational institution to "increase or diminish the number of Directors or Trustees of such corporation, so that they shall not be less than five nor more than twenty-one. (The Board of Trustees of Wabash College voted, July 14, 1859, to increase the number of Trustees from sixteen to twenty. On June 27, 1882, the Board increased the number to twenty-one).

Amended, 1901, to include the President of the College as a member of the board of twenty-one and providing, "that as to one trustee in each annual class of five (5) the election shall be limited to the nominee of the alumni."

The method of nomination provided in the Act directed that the alumni association, at each annual meeting, elect three canvassers who, with the assistance of the registrar of the college, should have distributed blank ballots by mail and should receive and count the first returns and have distributed a second supply of ballots containing the names of the three alumni receiving the highest vote on the first ballot. The canvassers should then report to the board, before the annual meeting, the name of that alumnus receiving the highest vote.

⁵Amended, 1851, changing the "annual" meeting to July; amended, 1867, changing the "annual" meeting to June "or at such other time as the Board of Trustees shall designate."

⁶Amended, 1851, empowering the trustees to establish an agricultural department, a Normal school, and "other Departments, Scientific and Professional."

SECTION V. The legislature reserves to itself the right to revise or amend the provisions of this act of incorporation at any time for ten years so as not however, to impair the fundamental principles of the incorporation.

SECTION VI. This act is declared to be a public act and the same shall be construed favorably for every beneficial purpose therein intended.

This act to be in force from and after its publication in the Crawfordsville Record, printed at Crawfordsville, Indiana, and to continue in force for the term of fifty years.

N. B. PALMER,
Speaker of the House of Rep.

DAVID WALLACE,
President of the Senate.

Approved 15th of January, 1834.

N. NOBLE.

JUDICIAL DECISIONS

Subscription Note not Invalid for Want of Consideration. The maker of the following note, when sued by the college, pleaded that it was invalid for want of consideration:

\$50.00

Warren County, March 5, 1842.

"For value received, I promise to pay *Wabash Manual Labor College and Teachers Seminary* fifty dollars five years from date, with interest payable annually on the 1st day of February.

JAMES JOHNSON"

The court held that the accomplishment of the object in aid of which the money was promised formed a good and valid consideration for the promise to pay. *Johnson v. Wabash College*, 2 Ind. 555 (1851).

WESLEYAN UNIVERSITY

MIDDLETOWN, CONNECTICUT

A non-sectarian private Liberal Arts College for men, founded in 1831 by the Methodist Episcopal Church, but never formally connected with that denomination. Endowment in 1930, \$5,026,000. Total annual income about \$640,000. The charter of Wesleyan University is expressly made not subject to repeal or amendment except with the consent of the corporation.

THE CHARTER OF WESLEYAN UNIVERSITY

In the form as amended up to and including
1931, with a note on former charters.¹

The original charter of Wesleyan University was passed in May, 1831 by the General Assembly of Connecticut (Private Laws of Connecticut Vol. I, p. 470). The name in the charter of 1831 was "The Wesleyan University" and the incorporators were Laban Clark, Thomas Birch, Heman Bangs, Isaac Kellogg, Aaron Sanford, Jr., James L. Phelps, John L. Smith, Wilbur Fisk, Joseph A. Merrill, Abel Bliss, Abraham Avery, John W. Hardy, Isaiah Fisk, William R. Shafter, George W. Stanley, Elijah Hubbard, Henry L. Dekoven, Jonathan Barnes, W. L. Storrs, Samuel D. Hubbard and Isaac Webb. The charter was first amended in 1870, Special Laws of Connecticut, Vol. VI, p. 795; and later in 1878, Special Laws of Connecticut, Vol. VIII, p. 140; and in 1879, Special Laws of Connecticut, Vol. VIII, p. 227; and in 1893, Special Laws of Connecticut, Vol. XI, p. 593; and in 1905, Special Laws of Connecticut, Vol. XIV, p. 868.

The charter was revised and amended in its entirety in 1907, Special Laws of Connecticut, Vol. XV, p. 292, (when the corporate name was changed to "Wesleyan University") and has been amended three times since 1907, namely in 1923, Special Laws of Connecticut, Vol. XIX, p. 332; in 1927, Special Laws of Connecticut, Vol. XX, p. 9, and in 1931, Special Acts, 1931, Special Act 310, p. 1013.

The 1907 charter as thus amended, up to and including the amendment of 1931, follows:

CHARTER OF 1907

SPECIAL LAWS OF CONNECTICUT, VOL. XV, P. 292

AN ACT REVISING AND AMENDING THE CHARTER OF WESLEYAN
UNIVERSITY

*Be it enacted by the Senate and House of Representatives in General
Assembly convened:*

SECTION 1. The corporation heretofore constituted and organized as The Wesleyan University, and located at Middletown, shall be and remain a body corporate and politic to be known as Wesleyan University, with all the powers, rights, and privi-

¹*Charter and By-Laws of Wesleyan University.* Middletown, Connecticut: Wesleyan University, 1931.

leges conferred upon The Wesleyan University by an act passed by the general assembly, May, 1831, and by all subsequent amendatory acts and resolutions; and all property of every name and kind whatsoever now held and possessed by or accruing to said corporation is hereby continued and confirmed in and to the corporation hereby constituted, to be held by it for the purposes set forth in the gift thereof, if any, and for the further uses and purposes hereinafter set forth.

SECTION 2. Said corporation shall consist of the Board of Trustees of Wesleyan University now in office and their successors. It shall be constituted for the sole and exclusive purpose of establishing, maintaining, and conducting a university or collegiate institution in the city of Middletown, of as high an order and having as many departments as the said corporation shall deem fit and proper; and in its corporate name and capacity it shall be capable in law to purchase, have, hold, receive, and enjoy, free from taxation except as provided in section 2317 of the general statutes, estate, real, personal, and mixed, of every kind and nature whatsoever, to such an amount as may be necessary for the purposes of said corporation, and the same to sell, grant, convey, alien, demise, manage, and dispose of at pleasure; to sue and be sued, plead and be impleaded, defend and be defended in any and all courts; to make, have, and use a common seal, and the same to alter, break, and renew at pleasure; to elect the president, faculty, and other instructors of the said university or collegiate institution; to ordain, establish, and execute such by-laws, ordinances, rules, and regulations as may be considered necessary, expedient, or convenient for the wise ordering and conducting of the affairs and government of said corporation, and for the proper regulation, government, discipline, and instruction of the students connected with said institution, not contrary to the laws of the United States or of this state; and generally to do and execute all and singular the acts, matters, and things, and to transact all business which to it shall appertain tending to promote the usefulness and prosperity of said institution and in the exercise of the powers herein conferred, subject to the limitations and conditions hereinafter set forth; provided, that no denominational test shall be imposed in the choice of trustees, officers, or teachers, or in the admission of students. Said corporation may, either in its corporate capacity or by one or more of its trustees, act as administrator or executor of any estate in which it may be interested as legatee, beneficiary, or creditor.

SECTION 3. The whole number of trustees shall not exceed fifty-five, of which the president of the university shall be one, *ex officio*. The alumni of the university shall have the right to elect ten, to be known as alumni trustees, each conference

hereinafter named, one, and the Board of Trustees the remainder. The term of office of all trustees shall be for five years commencing with the first day of October next succeeding their election. The Board of Trustees shall be divided, as at present, into five classes with no more than eleven trustees in any class. In case of a vacancy in the office of trustee, that body by which the said office was filled before may elect a trustee to fill such vacancy for the unexpired portion of the term, who shall take office immediately upon his election. All elections of trustees shall be by ballot. The mode of electing trustees shall be as follows: (a) Each of the following annual conferences of the Methodist Episcopal Church, namely, the New York, New England, New York East, New England Southern, New Hampshire, Vermont, Maine, Troy, Central New York, Northern New York, Newark and Wyoming, shall be entitled to elect, by a majority vote at its regular session, one trustee; but the Board of Trustees shall have power to determine the conditions and requirements by which this right shall be continued to the above-named conferences or extended to any other conference; provided the trustees so elected shall at no time exceed one-fourth of the whole number of the board. (b) All graduates of the first degree of three or more years' standing in any of the departments of the university, and all persons who have been, or may hereafter be, admitted to any degree higher than the first in said university, whether honorary or in course, and all non-graduates of the university who were members of classes that shall have been graduated at the university at least three years prior to the date of the election and who otherwise conform to such requirements as the Board of Trustees may, from time to time, prescribe, may, on the seventh day next preceding the public commencement day of said university, in each year, cast their votes under such regulations as the Board of Trustees may prescribe, for two persons to be chosen from among such graduates, to be trustees. A plurality of votes shall elect, and the regulations prescribed for the conduct of such elections may provide for the casting and recording of the votes of graduates that may not in person attend the election in Middletown. The word "graduates" shall include all persons who have the right to vote at such elections. (c) All trustees elected by the Board shall be elected by a majority vote, and, except to fill vacancies, at the annual meeting of the Board. If any trustee elected by the Board shall absent himself from two successive annual meetings of said Board without rendering an excuse satisfactory to said Board, it may declare the office of said absent trustee to be vacant and may elect a new trustee to fill said vacancy.²

²Amendment approved May 1, 1931. Connecticut Special Acts 1931, Special Act 310, p. 1013.

The annual meeting of the Board of Trustees shall be held at Middletown during the week preceding the annual commencement on such date as may be fixed by the by-laws. Special meetings, and any adjourned annual meeting, may be held in the city of New York, and all proceedings shall be as valid as though said meetings were held in Middletown. Notice of the time and place of all meetings shall be mailed to each trustee at least five days before the day of such meeting. At all meetings of the Board thirteen trustees shall constitute a quorum for the transaction of business. The concurring vote of at least nine members shall be requisite for the disposal of real estate, the election of new members, and the election of the president and faculty of the institution. The Board of Trustees, by a two-thirds vote of those present and voting at an annual meeting, shall have power to remove any one of its members, and shall also have power to remove any member of the Board of Instruction who may be deemed to be incompetent, unfaithful, immoral, or otherwise unfit, due notice having been given to the accused and also to each member of the Board of Trustees of such proposed action.³

There shall be a finance committee and an executive committee, composed of members of the Board of Trustees, which committees shall consist of such number, for such terms of office and with such powers and duties, not inconsistent herewith, as the by-laws may prescribe. The treasurer of the corporation shall, under the direction of the finance committee, submit to the executive committee, at least one week before each annual meeting of the Board in June, a budget containing detailed estimates of salaries, income and expenditure of the university for the ensuing year. Such budget shall be acted upon by the executive committee and submitted with its recommendations to the Board for final action at the annual meeting. The Board may decrease, but shall not, without the consent of the finance committee, increase the amount of the budget, or change the allocation within the budget.⁴

SECTION 5. The president, for the time being, of said university shall have power to confer degrees in course and honorary, and grant diplomas, in such form and to such persons as may be approved by the Board of Trustees, under such conditions as may be fixed by the by-laws, which diplomas shall entitle the possessors thereof, respectively, to all the immunities and privileges which, either by statute or usage, are allowed to possessors of similar diplomas from any other university, college, or seminary of learning.

³Amendment approved March 4, 1927, Special Laws of Connecticut, Vol. XX, p. 9.

⁴Amendment approved May 25, 1923, Special Laws of Connecticut, Vol. IX, p. 332.

SECTION 6. Neither the permanent funds of said corporation, nor any donations to said corporation the income of which may be used for the current expenses of said university, shall be pledged, hypothecated, or in any other manner disposed of by the trustees for the purpose of paying the current expenses of said university or for borrowing money to pay the same.

SECTION 7. The institution itself and its officers, faculty, and students shall enjoy the same privileges and exemptions as have already been granted to Yale College, its officers and students; provided, however, that the private property of the officers and faculty of the institution shall not be exempt from taxation.

SECTION 8. This act is hereby declared to be a public act, and shall be construed liberally for every beneficial purpose hereby intended, and no omission to use any of the privileges hereby granted shall cause a forfeiture of the same, nor shall any gift, grant, conveyance, or devise to or for the benefit of the corporation be defeated or prejudiced by any misnomer, misdescription, or informality whatever, provided the intention of the parties can be shown or ascertained beyond a reasonable doubt.

SECTION 9. This act shall take effect when it shall have been accepted by the Board of Trustees in legal meeting assembled, and a certificate of such acceptance shall have been filed with the secretary of state. It shall not, by reason of such acceptance or for any other reason, be subject to repeal, alteration, or amendment without the consent of the corporation hereby constituted.

SECTION 10. All acts and parts of acts inconsistent herewith are hereby repealed.

SECTION 11. This act shall take effect from its passage.
Approved, June 22, 1907.

Accepted by the Board of Trustees at their annual meeting held June 24, 1907.

Certificate filed with the Secretary of the State, October 10, 1907.

Note: The amendments of 1923, 1927 and 1931 did not require, by their terms, acceptance by the Board of Trustees as a prerequisite to the amendment taking effect. The Board of Trustees had, prior to the passage of the amendment by the General Assembly of Connecticut, approved of the same. These amendments became effective when approved by the governor of Connecticut.

WESTERN RESERVE UNIVERSITY

CLEVELAND, OHIO

A privately endowed, non-denominational university. Incorporated at Cleveland, Ohio, 1884. Its undergraduate college of Liberal Arts for men was founded at Hudson, Ohio, in 1826 as Western Reserve College. In 1882 this college was removed to Cleveland and renamed Adelbert College of Western Reserve University. Additional colleges and schools have been established as follows: Flora Stone Mather College (for women), 1888; School of Medicine, 1843; Law School, 1892; School of Dentistry, 1892; School of Library Science, 1904; School of Pharmacy, 1882; School of Applied Social Science, 1916; School of Nursing, 1923; Graduate School, 1926; Cleveland College, 1925; School of Education, 1928; Cleveland School of Architecture, 1928. Adelbert College, Cleveland College, and Cleveland School of Architecture each has its own corporate organization and board of trustees, with the same executives as the university. The School of Education is under the administrative control of a board jointly representing the university and the Board of Education of the city of Cleveland. Endowment in 1930 exceeded \$11,420,000 and total annual expenditures were more than \$3,050,000.

LAWS RELATING TO WESTERN RESERVE UNIVERSITY

STATUTORY PROVISIONS¹

SECTION 8623-97. Purposes. A corporation not for profit may be formed hereunder for any purpose or purposes not involving pecuniary gain or profit for which natural persons may lawfully associate themselves, provided that where the General Code makes special provision for the filing of articles of incorporation of designated classes of corporations not for profit, such corporation shall be formed under such provisions and not hereunder.²

SECTION 8623-101. Provisions of Regulations. Such corporation may adopt and change from time to time a code of regulations for its own government which shall be consistent with its articles and the laws of this state, and in particular (without prejudice to the generality of such authority) may include provisions in respect to:

1. The time and manner of calling and conducting annual or special meetings;
2. The place of holding such special meetings;
3. The requirements of a quorum which may be greater or less than a majority of the members;
4. The admission, voluntary withdrawal, censure, suspension and expulsion of members;
5. The fees and dues of members and the termination of membership on non-payment thereof, or otherwise;
6. The number, time and manner of choosing, qualifications, terms of office, official designations, powers, duties and compensation of its trustees and officers;
7. The appointment of executive or other committees of the trustees;

¹The sections of the General Code of Ohio selected for reproduction here have been chosen upon the basis of an opinion prepared by Mr. Edwin A. Howe, Office Counsel of Western Reserve University. The legal basis of the corporation known as Western Reserve University is found in Sections 8623-97 *et seq.*, being that part of the General Corporation Act of Ohio relating to the organization of corporations not for profit. Authority to organize the board of trustees of Western Reserve University in the manner provided in its By-Laws is found in Sections 8623-101 and 8623-106, General Code, and Section 9922, General Code.

²Sections 9922 *et seq.*, General Code of Ohio, relate to colleges and universities, but contain no provisions for the original incorporation thereof, and obviously refer only to the conduct of institutions already incorporated. Section 8623-132 provides that when special provision is made in the General Code for the incorporation, organization, conduct or government of corporations formed for any specified purpose, the General Corporation Act shall not apply, but the special provision shall govern unless it clearly appears that the special provision is cumulative.

8. The qualification of members and the specification of their relative rights or interests in the property of the corporation;

9. The method of changing such regulations; and

10. Any provision which may be desired for the purpose of regulating the exercise of powers of the corporation and of the trustees and of the members or of any class of members, and for the purpose of creating or defining rights and privileges of the members among themselves.

SECTION 8623-106. Trustees. The corporate powers, property and affairs of every corporation not for profit, subject to limitations contained in the general code, the articles or regulations, shall be exercised, conducted and controlled by a board of not less than three trustees, each of whom shall be a member of the corporation, and at least one of whom shall be a citizen of the state of Ohio. The articles of [or] regulations may provide the tenure of office of the trustees thereof, except that no term shall exceed in number of years the number of its trustees; provided, however, that members of any corporation heretofore or hereafter organized for the purpose of owning and conducting a hospital may provide for the election of a board of not more than fifteen trustees to serve during life.

Unless otherwise provided in the articles or regulations, any vacancy in such board of trustees caused by death, resignation or otherwise, shall be filled by the remaining members thereof.³

³*The legislative history*—the foregoing sections (8623-97, 8623-101 and 8623-106) were enacted in 1927 as parts of the General Corporation Act. The present organization of the board of trustees of Western Reserve University, and of the board of trustees of Adelbert College is the result of by-laws passed by the respective boards of trustees in pursuance of authority granted by Sections 9978 and 9979 of the General Code. Sections 9978 and 9979 were repealed at the 1929 session of the Ohio Legislature, by the enactment of Section 13767-4, General Code, effective July 26, 1929. It is thought that since Sections 9978 and 9979 were simply procedural statutes relating to the government of a corporation and not affecting the substantive rights of incorporators *inter se*, the effect of the enactment of Section 13767-4 repealing them was to remove them entirely as a basis of authority for any corporate organization, especially in view of the fact that Sections 8623-101 and 8623-106 provide such a basis.

As a matter of historical interest, Sections 9978 and 9979, now repealed, are here reproduced:

Sec. 9978. May increase number of trustees of certain corporations.—The board of trustees of a university or college heretofore incorporated, but not under the patronage of conferences or other ecclesiastical bodies of any religious denomination, may increase the number of such trustees to twenty-four, exclusive of the president, or a less number, and divide such trustees into six classes, each class to serve six years, and one class to be chosen each year, for such term. One trustee of each class may be chosen by the votes of the alumni of such university or college, if the board of trustees so provides by by-law, in which case the board also shall provide by such by-laws, a method of nominating and electing such appointee of the alumni. (R. S. Sec. 3771a.)

Sec. 9979. Distribution of new members.—The president of such university or college shall, *ex officio*, be a trustee perpetually, and not be included in the classes going out in rotation. If in the first enlargement of the board of trustees, under the

SECTION 9922. When officers may be appointed and degrees conferred. When a college, university, or other institution of learning incorporated for the purpose of promoting education, religion, morality, or the fine arts, has acquired real or personal property, of twenty-five thousand dollars in value, has filed in the office of the secretary of state a schedule of the kind and value of such property, verified by the oaths of its trustees, such trustees may appoint a president, professors, tutors, and any other necessary agents and officers, fix the compensation of each, and enact such by-laws consistent with the laws of this state and the United States, for the government of the institution, and for conducting the affairs of the corporation, as they deem necessary. On the recommendation of the faculty, the trustees also may confer all the degrees and honors conferred by colleges and universities of the United States, and such others having reference to the course of study, and the accomplishments of the student, as they deem proper.

CHARTER OF ADELBERT COLLEGE OF
WESTERN RESERVE UNIVERSITY
(Originally incorporated as Western Reserve College)⁴

AN ACT
TO INCORPORATE THE TRUSTEES OF THE
WESTERN RESERVE COLLEGE
(January 7, 1826)

SECTION 1. Be it enacted by the General Assembly of the State of Ohio, That George Swift and Zalmon Fitch, of Trumbull county; Caleb Pitkin, Elizur Wright, John Seward, Jr., Benjamin Fenn, Joshua B. Sherwood and David Hudson, of Portage county; Stephen I. Bradstreet and Simeon Woodruff, of Cuyahoga county; Henry Brown and Herman Kingsbury, of Lorain county and their successors, be, and they are hereby created a body politic and corporate, to be styled the Board of Trustees of the Western Reserve College, and by that name to remain in perpetual succession, with full powers to sue and be

preceding section it be necessary to distribute new members to the several classes, whose terms will expire by rotation, the distribution may be made in such manner as the board directs so that no trustee shall be elected for a longer term than six years. (R. S. Sec. 3771a.)

Authority for Western Reserve University to establish the organization of its board of trustees by means of by-laws adopted by the trustees rather than by means of a code of regulations adopted by its members as provided in Section 8623-101, is found in Section 9922 of the General Code, which is reproduced herein.

⁴This reproduction, and those of the articles of incorporation of Western Reserve University and of Cleveland College and of the Cleveland School of Architecture which follow it in this compilation, are from copies supplied by Sidney S. Wilson, Secretary-Treasurer of Western Reserve University.

sued, plead and be pleaded; to acquire, hold, and convey property, real and personal; to have and use a common seal; to alter and renew the same at pleasure; to make and alter from time to time such by-laws as they may deem necessary for the government of said institution, its officers and servants. Provided, such by-laws are not inconsistent with the Constitution and the Laws of the United States, or of this State; also to have power to confer on those whom they may deem worthy, all such honors and degrees as are usually conferred in similar institutions.

SECTION 2. That the said College shall be located in the township of Hudson, in the county of Portage, and shall be erected on a plan sufficiently extensive to afford instruction in the Liberal Arts and Sciences, and the Trustees may, as their ability shall increase, and the interests of the community require, erect additional departments for the study of any or all of the liberal professions.

SECTION 3. That the Board of Trustees shall, from time to time, appoint a President, Vice-President, and other officers and instructors, and also such servants of the institution as may be necessary; and shall have power to displace any or either of them for good and sufficient reasons; and also to fill vacancies which may happen by resignation, death or otherwise, in said Board or among said officers or said servants; and also to prescribe and direct the course of study to be pursued in said institution and its departments.

SECTION 4. The President of the College shall be *ex officio*, a member of the Board of Trustees and President of the same; and in his absence the Vice-President shall preside in the meeting of the Board; and in the absence of both the President and Vice-President the Board shall elect one of their own members to preside for the time being. Provided, that if any of said Trustees shall be permanently appointed President of said College, his office of Trustee shall be deemed vacant, and the Board of Trustees shall fill the same accordingly.

SECTION 5. That the Board of Trustees shall consist of twelve members,⁵ exclusive of the President, any seven of whom shall constitute a quorum to do business; said Board of Trustees shall hold their first annual meeting in the township of Hudson, on the first Wednesday of March, eighteen hundred and twenty-six; and afterwards they shall meet on their own appointments, but in cases of emergency the President, with the advice of two Trustees, may call a special meeting of the Board, or any five

⁵Subsequently amended to permit increase of the number to twenty-four, and the quorum to thirteen, by section 9978, General Code of Ohio, which was repealed by Section 13767-4, effective July 26, 1929. For the present organization of the board of trustees, see the note which follows this charter and its amendments.

members may call such meeting by giving notice to each member at least ten days before the time of said meeting.

SECTION 6. The Board of Trustees shall faithfully apply all funds by them collected or received, according to their best judgment, in erecting suitable buildings, supporting the necessary officers, instructors and servants, and in procuring books, maps, charts, globes, and other apparatus necessary to the success of the institution. Provided, nevertheless, that in any case any donation or bequest shall be made for particular purposes accordant with the design of this institution, and the Corporation shall receive and accept the same, every donation or bequest shall be applied in conformity to the conditions or design expressed by the donor.

SECTION 7. The Treasurer of the institution shall always, and all other agents when required, before entering on the duties of their appointments, give bonds for the security of the Corporation and of the public in such penal sums and with such securities as the Board of Trustees shall approve, and that all process against the Corporation shall be by summons, and the service of the same shall be by leaving an attested copy thereof with the Treasurer, at least thirty days before the return thereof.

SECTION 8. That the Legislature shall have a right to alter or amend this act when they deem it necessary. Provided, that no fund or property belonging to said College shall ever be by law appropriated to any other purpose.

WM. W. IRVIN,
Speaker of the House of Representatives.

January 7, 1826. ALLEN TRIMBLE,
Speaker of the Senate.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO INCORPORATE THE TRUSTEES OF THE WESTERN RESERVE COLLEGE,"

PASSED JANUARY 7, 1826

SECTION 1. Be it enacted by the General Assembly of the State of Ohio, That the Trustees of the Western Reserve College shall be, and hereby are authorized to establish the Medical Department, contemplated by the act of which this is amendatory, in the City of Cleveland, in the same manner and with like power to confer degrees and award diplomas, as though the same department had been established under said act hereby amended, at Hudson.

JOHN M. GALLAGHER,
Speaker of the House of Representatives.

February 23d, A. D., 1844. THOMAS W. BARTLEY,
Speaker of the Senate.

CHANGE OF NAME TO
"ADELBERT COLLEGE OF WESTERN RESERVE UNIVERSITY"

State of Ohio, Summit County, ss.

IN COURT OF COMMON PLEAS,

September Term, 1881.

Board of Trustees of the Western Reserve College, Plaintiffs.
To change name.

Journal, Vol. 24, page 191. Transcript of Journal Entry.

This cause came on to be heard upon petition of the Board of Trustees of the Western Reserve College, a Corporation the principal office of which is located in the county of Summit, in the State of Ohio, for a change of the name of said Corporation to Adelbert College of Western Reserve University, and the evidence, on consideration whereof the Courts find that thirty days' notice of the object and prayer of the petitioners has been given by publication in a newspaper of general circulation in said county, according to law, that all of the statements in said petition contained are true, and that there is good cause for the change of name prayed for in said petition. It is therefore ordered by the Court that the name of said Corporation be and the same is hereby changed from the Board of Trustees of the Western Reserve College to Adelbert College of Western Reserve University.

Note: By virtue of Article I, section 1 of the *By-Laws of Adelbert College of Western Reserve University* (1926), the Board of Trustees of that corporation now consists of twenty-four members exclusive of the President, who is an *ex officio* member. The members are divided into six classes, each consisting of four trustees, to hold office for terms of six years each.

ARTICLES OF INCORPORATION
OF WESTERN RESERVE UNIVERSITY

We, the undersigned, Rutherford B. Hayes, William J. Boardman, Joseph Perkins, Truman P. Handy, Gustav C. E. Weber, Samuel E. Williamson, George H. Ely, Carroll Cutler, citizens of the State of Ohio, with the view of forming a corporation in pursuance of the Revised Statutes of this State of Ohio, do make, enter into and adopt the following Articles of Incorporation:

ARTICLE I

The name of the corporation shall be WESTERN RESERVE UNIVERSITY.

ARTICLE II

The said corporation shall be located in the city of Cleveland, county of Cuyahoga, and State of Ohio.

ARTICLE III

The purpose for which said corporation is formed is to organize, establish and maintain in said city of Cleveland a University for the promotion of learning by means of Departments of Medicine, of Law, of Philosophy, of Art, of Music, and such other means of education as may be deemed advisable by the Board of Trustees of said corporation.

RUTHERFORD B. HAYES,
WILLIAM J. BOARDMAN,
JOSEPH PERKINS,
TRUMAN P. HANDY,
GUSTAV C. E. WEBER,
SAMUEL E. WILLIAMSON,
GEORGE H. ELY,
CARROLL CUTLER.

Cleveland, April 5, 1884.

Note: By virtue of Article II, section 1 of the *By-Laws of Western Reserve University* (1926), the Board of Trustees of that corporation now consists of twenty-four members exclusive of the President, who is an *ex officio* member. The members are divided into six classes, each consisting of four trustees, to hold office for terms of six years each.

STATE OF OHIO

Filed:

July 31st, 1925.

Corp. No. 117613.

THESE ARTICLES OF INCORPORATION OF
"CLEVELAND COLLEGE"

WITNESSETH, That we, the undersigned, a majority of whom are citizens of the state of Ohio, desiring to form a corporation, not for profit, under the general corporation laws of said State, do hereby certify:

FIRST. The name of said corporation shall be "Cleveland College".

SECOND. Said corporation is to be located at City of Cleveland, Cuyahoga County, Ohio, and its principal business there transacted.

THIRD. The purpose for which it is formed is to found and maintain a College and to promote education, primarily but not exclusively in evening classes; to become associated with other institutions of learning as a University; to grant degrees and to have and use all other powers provided by law for Colleges; and to do any and all things necessary or convenient for the accomplishment thereof.

IN WITNESS WHEREOF, We have hereunto set our hands, this 29th day of July, A. D. 1925.

ROBERT E. VINSON,
ECKSTEIN CASE,
NEWTON D. BAKER,
ELBERT H. BAKER,
W. G. LEUTNER.

The State of Ohio, County of Cuyahoga, ss:

Personally appeared before me, the undersigned, a Notary Public in and for said county, this 29th day of July, A. D. 1925, the above named Robert E. Vinson, Eckstein Case, Newton D. Baker, Elbert H. Baker, and W. G. Leutner, who each severally acknowledged the signing of the foregoing articles of incorporation to be his free act and deed, for the uses, and purposes therein mentioned.

Witness my hand, and official seal on the day and year last aforesaid.

(Seal) (Signed) MYRON B. McCAMMON,
Notary Public.

The State of Ohio, County of Cuyahoga, ss:

I, George Wallace, Clerk of the Court of Common Pleas, within and for the county aforesaid, do hereby certify that Myron B. McCammon, whose name is subscribed to the foregoing acknowledgment as a Notary Public was at the date thereof a Notary Public, in and for said county, duly commissioned and qualified, and authorized, as such to take said acknowledgment, and further, that I am well acquainted with his handwriting and believe that the signature to said acknowledgment is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of said Court, at Cleveland, Ohio, this 30th day of July, A. D. 1925.

(Signed) GEORGE WALLACE, *Clerk.*
By J. A. Baker,
Deputy Clerk.
(Seal)

UNITED STATES OF AMERICA }
 STATE OF OHIO }
 Office of the Secretary of State }

I, Thad H. Brown, Secretary of State, of the State of Ohio, do hereby certify that the foregoing is an exemplified copy, carefully compared by me with the original record now in my official custody as Secretary of State, and found to be true and correct, of the Articles of Incorporation of

"CLEVELAND COLLEGE"

filed in this office on the 31st day of July, A. D. 1925, and recorded in Volume 327, Page 9, of the Records of Incorporations.

Witness my hand and official
 seal at Columbus, Ohio, this
 31st day of July, A. D. 1925.

(Signed) THAD H. BROWN,
Secretary of State.

AN AMENDMENT

Filed 12-28-26 Corp. no. 117613.

RESOLVED, That the Articles of Incorporation of CLEVELAND COLLEGE be and the same are hereby amended so that, the corporate name be changed from Cleveland College to "CLEVELAND COLLEGE OF WESTERN RESERVE UNIVERSITY."

CERTIFICATE OF AMENDMENT

To the Secretary of State, Columbus, Ohio:—

Cleveland College, acting by its President and Secretary, hereby certifies that the foregoing is a true copy of the original amendment to the Articles of Incorporation of Cleveland College, which was adopted by the votes of more than three-fifths of the members at a meeting thereof, held on Friday the 26th day of November 1926, notice of which meeting was duly waived in writing as authorized by law.

In testimony whereof, the President and Secretary of Cleveland College acting for and on behalf of said corporation, have hereunto set their hands and caused the seal of said corporation to be hereunto affixed this 17th day of December, 1926.

Cleveland College

By ROBERT E. VINSON, *President.*

By SIDNEY S. WILSON, *Secretary.*

(Seal)

UNITED STATES OF AMERICA }
 STATE OF OHIO } ss.
 Office of the Secretary of State }

I, THAD H. BROWN, Secretary of State, of the State of Ohio, do hereby certify that the foregoing is an exemplified copy, carefully compared by me with the original record now in my official custody as Secretary of State, and found to be true and correct, of the Amendment to the Articles of Incorporation of CLEVELAND COLLEGE filed in this office on the 28th day of December, A. D. 1926, and recorded in Volume 333, page 630, of the Records of Incorporations.

(Seal) THAD H. BROWN,
Secretary of State.

Note: By virtue of Article 4, sections 1 and 2 of the *Code of Regulations of Cleveland College*, the Board of Trustees of the corporation consists of fifteen members, including the President. All trustees must be members of the corporation, and are elected (two each year) at the annual meetings of the corporation for terms of seven years. The corporation elects its own members, the total number of whom at any one time must not exceed thirty.

THESE ARTICLES OF INCORPORATION OF THE CLEVELAND SCHOOL OF ARCHITECTURE

WITNESSETH, That we, the undersigned, all of whom are citizens of the State of Ohio, desiring to form a corporation, not for profit, under the general corporation laws of said State, do hereby certify:

FIRST. The name of said corporation shall be "The Cleveland School of Architecture".

SECOND. Said corporation is to be located at Cleveland, in Cuyahoga County, Ohio, and its principal business there transacted.

THIRD. Said corporation is formed for the purpose of establishing, maintaining and conducting a school of architecture in any and all of its respective branches, both directly and in co-operation with other educational institutions; to acquire, hold and use for said purpose any securities, real estate and other property necessary to carry out said purpose.

IN WITNESS WHEREOF, We have hereunto set our hands, this 22nd day of May, A. D. 1924.

ABRAM GARFIELD,
 RUDOLPH STANLEY-BROWN,
 JAMES R. GARFIELD,
 ARTHUR D. BALDWIN,
 MABELLE L. MUSSER.

The State of Ohio, County of Cuyahoga, ss:

Personally appeared before me, the undersigned, a Notary Public in and for said county, this 22nd day of May, A. D. 1924, the above named Abram Garfield, Rudolph Stanley-Brown, James R. Garfield, Arthur D. Baldwin and Mabelle L. Musser, who each severally acknowledged the signing of the foregoing articles of incorporation to be his free act and deed, for the uses, and purposes therein mentioned.

Witness my hand, and official seal on the day and year last aforesaid.

CARL A. HOPE,
Notary Public.

(Seal)

The State of Ohio, County of Cuyahoga, ss:

I, George Wallace, Clerk of the Court of Common Pleas, within and for the county aforesaid, do hereby certify that Carl A. Hope, whose name is subscribed to the foregoing acknowledgment as a Notary Public, was at the date thereof a Notary Public, in and for said county, duly commissioned and qualified, and authorized, as such to take said acknowledgment, and further, that I am well acquainted with his handwriting and believe that the signature to said acknowledgment is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of said Court, at Cleveland, Ohio, this 22nd day of May, A. D. 1924.

GEORGE WALLACE, *Clerk,*
By Arthur Limb, *Deputy Clerk.*

(Seal)

UNITED STATES OF AMERICA }
STATE OF OHIO } ss:
Office of the Secretary of State }

I, THAD H. BROWN, Secretary of State, of the State of Ohio, do hereby certify that the foregoing is an exemplified copy, carefully compared by me with the original record now in my official custody as Secretary of State, and found to be true and correct, of the Articles of Incorporation of THE CLEVELAND SCHOOL OF ARCHITECTURE filed in this office on the 23rd day of May, A. D. 1924, and recorded in Volume 312, Page 64, of the Records of Incorporations.

Witness my hand and official
seal at Columbus, Ohio, this
23rd day of May, A. D. 1924.

THAD H. BROWN,
Secretary of State.

(Seal)

Filed May 28, 1929
Corp. No. 112015

CERTIFICATE OF AMENDMENT TO ARTICLES OF
INCORPORATION OF THE CLEVELAND SCHOOL
OF ARCHITECTURE

Abram Garfield, President, and Charles Morris, Secretary, of The Cleveland School of Architecture, an Ohio corporation organized not for profit, do hereby certify that at a meeting of the members of said corporation duly called and held on the 8th day of May, 1929, at 12:30 o'clock, P. M., at which meeting a quorum of such members were present, and that by the affirmative vote of a majority of the members present thereat the following resolution of amendment was adopted.

RESOLVED, That the Articles of Incorporation of THE CLEVELAND SCHOOL OF ARCHITECTURE, be and the same are hereby amended so that the corporate name be changed from THE CLEVELAND SCHOOL OF ARCHITECTURE to "CLEVELAND SCHOOL OF ARCHITECTURE OF WESTERN RESERVE UNIVERSITY".

IN WITNESS WHEREOF, said Abram Garfield, President, and Charles Morris, Secretary, of The Cleveland School of Architecture, acting for and on behalf of said corporation, have hereunto subscribed their names, and caused the seal of said corporation to be hereunto affixed, this 8th day of May, 1929.

ABRAM GARFIELD,
President.

CHARLES MORRIS,
Secretary.

(Seal)

UNITED STATES OF AMERICA }
STATE OF OHIO }
OFFICE OF THE SECRETARY }
OF STATE }

I, Clarence J. Brown, Secretary of State of the State of Ohio, do hereby certify that the foregoing is an exemplified copy, carefully compared by me with the original record now in my official custody as Secretary of State, and found to be true and correct, of the

AMENDMENT OF
THE CLEVELAND SCHOOL OF ARCHITECTURE
filed in this office on the 28th day of May, A. D. 1929 and

recorded in Volume 374, Page 583, of the Records of Incorporations.

WITNESS my hand and official seal, at Columbus, this 28th day of May, A. D. 1929.

CLARENCE J. BROWN,

Secretary of State.

(Seal)

Note: By virtue of Article 3, sections 1 and 2 of the *Code of Regulations of Cleveland School of Architecture of Western Reserve University*, the Board of Trustees of the corporation shall consist of not less than six nor more than fifteen members, all of whom must be members of the corporation. The corporation elects its own members, the total number of whom at any one time must not exceed fifteen. The President of Western Reserve University is *ex officio* a member of the corporation and President thereof.

The Board of Trustees now consists (1933) of seven members, including the President of Western Reserve University, who is *ex officio* President of the Board. The members are elected at annual meetings of the corporation, three for terms of six years, and three for terms of three years. The Cleveland Chapter of the American Institute of Architects has the privilege of nominating the members who are to be elected for three-year terms.

THE CLEVELAND SCHOOL OF EDUCATION AND THE SCHOOL OF EDUCATION OF WESTERN RESERVE UNIVERSITY*

SECTION 7650-1. Board of Education Authorized to Contract for Special Instruction. The board or boards of education of any city school district or districts may enter into contract for a term not exceeding one year upon such terms and conditions as each board may deem expedient with each other, or with the trustees or other duly authorized officials of any college or university legally organized within the meaning of the provisions of section 7650 of the General Code of Ohio, for the purpose of obtaining in such school district instruction in the special technical, professional or other advanced studies which may be pursued in such college or university beyond the scope of the public high school. In like manner such board or

*This School of Education is a joint enterprise operated under annual contract between the Cleveland Board of Education and the Board of Trustees of Western Reserve University. Authority for this arrangement is found in Section 7650-1, General Code of Ohio, reproduced below. This section became effective July 18, 1927.

boards of education may contract for a term not exceeding one year with each other or with a private corporation or association not for profit, maintaining and furnishing a museum of art, science or history, or providing musical instruction, for the purpose of obtaining in such school district such instruction or other educational services as can be rendered to the schools by such private corporation or association. (112 v. 115.)

SECTION 7650. College defined. A college is a school of a higher grade than a high school, in which instruction in the high school branches is carried beyond the scope of the high school and other advanced studies are pursued, or a school in which special, technical or professional studies are pursued, and which, when legally organized, may have the right to confer degrees in agreement with the terms of the law regulating its practices or its charter; or in the absence of legislative direction, in agreement with the practices of the better institutions of learning of their respective kinds in the United States. (R. S. 4007-3; 95 v. 115.)

THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF CLEVELAND

AGREEMENT FOR

..... Exchange of facilities and accommodations between the Board of Education and the Western Reserve University for the period from June, 1928, to June, 1929, and from year to year thereafter.

THIS AGREEMENT is entered into by and between the Board of Trustees of Western Reserve University (herein referred to as the Board of Trustees) and the Board of Education of the City School District of the City of Cleveland (herein referred to as the Board of Education).

Whereas, the Board of Trustees is now maintaining in the College for Women of Western Reserve University a Department of Education and also a Department of Nursery-Kindergarten-Primary Training; and

Whereas, the Board of Education is now maintaining a normal school, known as the Cleveland School of Education; and in this agreement designated as such; and

Whereas, both of the parties hereto, in cooperation with each other, are jointly maintaining a summer school for the training of teachers and also various extension courses for teachers, known as the Senior Teachers' College, under a certain contract between the parties hereto under date of October 4, 1920; and

Whereas, it is deemed advisable for the public good that both parties hereto should exert every possible effort to facilitate through cooperation the widest and most complete use of the combined material and professional equipment of Western Reserve University and the Board of Education in all branches of educational service; now, therefore, it is agreed

I. ORGANIZATION

(1) The Board of Trustees agrees to establish a School of Education of Western Reserve University for the training of school administrators, supervisors, and teachers of all grades on a parity with the other professional schools of the University.

(2) The Board of Trustees agrees to transfer to the School of Education of Western Reserve University all of its interest in the Department of Education in the College for Women and the Department of Nursery-Kindergarten-Primary Training, as well as the Senior Teachers' College and the summer session together with such equipment, collections, and credits as are now vested in these departments.

(3) Consistently with the provisions of this agreement, the Board of Education agrees to maintain the Cleveland School of Education in accordance with the present standards together with practice and observation schools.

II. ADMINISTRATION AND FACULTY

(1) The administrative detail of the School of Education of Western Reserve University shall be vested in an Administrative Board consisting of the President of the University, the President of the Board of Education, or other designated member of the Board, the Superintendent of Schools of the City of Cleveland, the Dean of Administration of Western Reserve University, and the Dean of the School of Education.

(2) The Administrative Board of the School of Education shall have full administrative responsibilities, subject to the powers of the Board of Trustees as defined by its By-laws; to establish curricula, requirements for admission, promotion and degrees; to administer discipline; to nominate for appointment to the teaching staff and other positions; to recommend candidates for degrees; to determine tuition and other fees; to prepare the annual budget in consultation with the financial officers of the two contracting parties, for submission to the Board of Education and the Board of Trustees, and otherwise to administer the school. The President of the University shall be *ex officio* Chairman of the Board.

(3) The Board of Trustees shall appoint a Dean of the School of Education of Western Reserve University, with the

approval of the Board of Education, with such duties and powers as are associated with that office under the By-laws of the University.

(4) It is understood and agreed that the members of the faculty of the Cleveland School of Education shall become members of the faculty of the School of Education of Western Reserve University.

III. OPERATION

(1) Each of the parties hereto agrees to put at the disposal of the School of Education of Western Reserve University all of its facilities in so far as their use by the School of Education does not interfere with the proper use of such facilities by other divisions or departments for which these facilities are provided.

(2) The curriculum of the School of Education of Western Reserve University shall include courses now being offered in the Cleveland School of Education, it being the intent and purpose of the parties hereto and in so far as may be legally possible, that the Cleveland School of Education be merged with the School of Education of Western Reserve University.

(3) Students enrolled in the Cleveland School of Education shall be re-enrolled in the School of Education of Western Reserve University. All students admitted hereafter shall comply with the requirements for admission to be established by the Administrative Board herein provided for.

(4) The Board of Trustees agrees to appropriate for the budget of the School of Education for the period from June, 1928, to June, 1929, a sum at least equal to the sum expended during the corresponding current period for the Department of Education of the College for Women, for the Nursery-Kindergarten-Primary Training Department, and for the Senior Teachers' College and the Summer Session, and to undertake in the future to foster the school in accordance with the best University standards.

(5) The Board of Education agrees to appropriate for the maintenance of the Cleveland School of Education for the budget, for the period from June 1928, to June 1929, a sum at least equal to the net sum so expended during the corresponding current period.

(6) All moneys collected and appropriated by the Board of Education for the maintenance of the said Cleveland School of Education shall be disbursed by it in the manner provided by law for defraying the expenses of public schools.

This agreement shall be effective as soon as approved by joint resolution of the Board of Education and the Board of Trustees,

and shall continue in effect until June 30, 1929, and may be renewed from year to year thereafter.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their properly designated officers at Cleveland, Ohio, this 23rd day of June, 1928.

THE BOARD OF TRUSTEES OF WEST-
ERN RESERVE UNIVERSITY

By ROBERT E. VINSON, *President*.

By SIDNEY S. WILSON, *Secretary-Treasurer*.

THE BOARD OF EDUCATION OF THE
CITY SCHOOL DISTRICT OF THE CITY
OF CLEVELAND

By F. G. HOGEN, *Director of Schools*.

JUDICIAL DECISIONS

Expulsion of Student. A student in the university, which is a private corporation, impliedly agrees to be disciplined by the faculty according to the custom of such institutions. In administering such discipline, the authorities should afford him a fair opportunity to present evidence of his innocence, but are not under obligation to afford him all the formalities of a trial in a court of justice. Thus when a student in the law school was denied readmission for his second year on account of continued misconduct, including the appropriation of a book belonging to an innocent fellow student, and on account of failure in his examinations, his petition for an injunction to prevent his expulsion was denied by the court. *Koblitz v. Western Reserve University*, 21 O.C.C. 144 (1901).

Power to Confer Degrees. The trustees of the university, by virtue of Section 9922, General Code of Ohio, are dependent upon the recommendation of the faculty in conferring degrees. Hence a student in the School of Medicine who failed five times in one subject and three times in another, cannot maintain an action against the university for breach of contract in failing to confer upon him a degree in medicine. *Sutton v. Western Reserve University*, 12 O.L. R. 539, 60 Bull. 33 (1915).

UNIVERSITY OF WISCONSIN

MADISON, WISCONSIN

A state university organized by legislative act in 1848. Comprises the College of Letters and Science, the College of Engineering, the College of Agriculture, the Law School, the Medical School, the School of Education, the Graduate School, and the Extension Division. Invested funds total \$1,340,000. Annual state appropriations for 1931 were approximately \$4,198,000. The total income was more than \$4,800,000. The State Treasurer is custodian of "all securities for loans and all moneys belonging to the university or in any wise appropriated by law to its endowment or support."

STATUTORY PROVISIONS

UNIVERSITY OF WISCONSIN

36.01. Location and style of. There is established in this state at the city of Madison an institution of learning by the name and style of "The University of Wisconsin." [*Stats. 1915 s. 377; 1917 c. 453 s. 2.*]¹

36.02. Regents; appointments; terms. The government of the university shall be vested in a board of regents, to consist of one member from each congressional district and four from the state at large, of whom at least two shall be women, two shall be farmers, and two shall be engaged in the manual trades, to be appointed by the governor; the state superintendent and the president of the university shall be *ex officio* members of said board; said president shall be a member of all the standing committees of the board, but shall have the right to vote only in case of a tie. The terms of office of the appointed regents shall be six years, except as below specified, from the first Monday in February in the year in which they are appointed and until the appointment and qualification of their respective successors. Within thirty days after passage of this act the governor shall appoint the two additional regents herein provided, for terms to expire on the first Monday in February 1924 and the first Monday in February 1926, respectively; thereafter as the various terms expire all appointments shall be for a period of six years. [*Stats. 1925 s. 378; 1917 c. 453 s. 2; 1919 c. 362 s. 19, 32; 1923 c. 201.*]²

¹The University of Wisconsin had its inception in a Federal land grant, 1838. This grant (U. S. 25th Congress, 2d. Session, Statutes-at-Large, Ch. 110) set aside two townships in the Territory of Wisconsin for the "use and support of a University within said Territory." *University of Wisconsin, By-Laws and Laws of the Regents.* p. 1. Madison, Wisconsin, 1914.

Territorial legislation establishing the University was passed in 1838. *Ibid.* pp. 32-34.

²The territorial act of 1838, establishing "the University of the Territory of Wisconsin" provided for a board of "visitors" "not exceeding twenty-one in number", including the Governor, the Secretary of the Territory, the Judge of the Supreme Court and the President of the University, the others to be elected by the legislature. *Ibid.* p. 32.

The Constitution of 1848 contained the following:

STATE UNIVERSITY. SECTION 6. Provisions shall be made by law for the establishment of a state university at or near the seat of state government, and for connecting with the same, from time to time, such colleges in different parts of the state as the interests of education may require. The proceeds of all lands that have been or may hereafter be granted by the United States to the state for the support of a university shall be and remain a perpetual fund to be called "the university fund," the interest of

36.03. Powers of board; officers. The board of regents and their successors in office shall constitute a body corporate by the name of "The Regents of the University of Wisconsin," and shall possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law, and shall have the custody of the books, records, buildings and all other property of said university. The board shall elect a president and a secretary, who shall perform such duties as may be prescribed by the by-laws of the board. The secretary shall keep a faithful record of all the transactions of the board and of the executive committee thereof. It shall be the duty of the state treasurer to have the charge of all securities for loans and all moneys belonging to the university or in any wise appropriated by law to its endowment or support; to collect the interest on all securities held by him; to pay out moneys only upon the warrant of the secretary of state as provided by law; to keep the same and the accounts thereof separate and distinct from other public funds, and particularly distinguish the accounts of every fund, according to the nature thereof, coming to his charge, whether created by law or by private bounty; and to discharge these and other appropriate functions relating thereto subject to such regulations as the board may adopt not inconsistent with his official duties; and he and his sureties shall be liable on his official bond as state treasurer for the faithful discharge of such duties. [*Stats. 1915 s. 379; 1917 c. 453 s. 2.*]

36.04. Meetings; quorum. The time for the election of the president and secretary of said board and the duration of their respective terms of office, and the times for holding the regular annual meeting and such other meetings as may be required, and the manner of notifying the same, shall be determined by the by-laws of the board. A majority of the board shall consti-

which shall be appropriated to the support of the state university, and no sectarian instruction shall be allowed in such university.

It is evident that the University was intended to be at the head of the state educational system. This idea was clearly indicated in the territorial act of 1838, Section 5, which stated: "The said visitors may from time to time establish such colleges, academies and schools depending upon said University, as they may think proper and as the funds of the corporation will permit. And it shall be the duty of the said visitors to visit and inspect said colleges, academies and schools, to examine into the state system of education and discipline therein . . . to make such laws and ordinances . . . as they may judge most expedient for the government of such schools. . . ."

In accordance with the constitutional provision cited, the Legislature of Wisconsin provided for establishment of the University in 1848, *Laws of Wisconsin*, 1848, p. 191. This act specified a board of "regents" consisting of the president, and twelve members "who shall be elected by the senate and assembly of this state", the term of office to be six years. A supplementary act, *Laws of Wisconsin*, 1848, p. 191, provided that the governor fill all vacancies by appointment, the appointees to continue in office "until the close of the next session of the legislature, and until others are elected in their stead."

tute a quorum for the transaction of business, but a less number may adjourn from time to time. [*Stats. 1915 s. 380; 1917 c. 453 s. 2.*]

36.05. University regents' meetings public. The meetings of the board of regents of the university shall be open to the public and the press and all records of such meetings and of all proceedings of such board shall be open to inspection by the public and the press at any reasonable hours thereafter; provided, that said board may hold executive sessions, the findings of said executive sessions to be made a part of the records of the proceedings of said board. [*Stats. 1915 s. 380a; 1917 c. 453 s. 2.*]

36.06. Duties of regents; additional powers. (1) The board of regents shall enact laws for the government of the university in all its branches; elect a president and the requisite number of professors, instructors, officers and employes, and fix the salaries³ and the term of office of each, and determine the moral and educational qualifications of applicants for admission to the various courses of instruction; but no instruction, either sectarian in religion or partisan in politics, shall ever be allowed in any department of the university; and no sectarian or partisan tests shall ever be allowed or exercised in the appointment of regents or in the election of professors, teachers or other officers of the university, or in the admission of students thereto or for any purpose whatever.

(2) The board shall have power to remove the president or any professor, instructor or officer of the university when, in the judgment of the board, the interests of the university require it.

(3) The board may prescribe rules and regulations for the management of the libraries, cabinet, museum, laboratories and all other property of the university and of its several departments, and for the care and preservation thereof, with penalties and forfeitures by way of damages for their violation, which may be sued for and collected in the name of the board before any court having jurisdiction of such action.

(4) In the use of men's and women's dormitories at the university, preference as to rooming and boarding facilities shall be given to students who are legal residents of this state; but in case additional facilities remain after such preference, the above mentioned rooming and boarding facilities may be extended to nonresident students. The board shall make suitable rules and regulations for carrying such dormitory preferences into effect. All salaries and compensations provided for in this section shall be charged against the proper appropriation for the board of regents of the university.

³The act of 1848, *Laws of Wisconsin*, 1848, p. 191, required, Section 7, "that the salaries thus determined shall be submitted to the legislature for their approval or disapproval".

(5) Said board may acquire by condemnation proceedings such parcels of land as it deems necessary for the use of any institution under its control whenever the board is unable to agree with the owner upon the compensation therefor, or whenever the absence or legal incapacity of such owner or other cause, prevents or unreasonably delays such agreement.

(6) For the purpose of providing dormitories and commons and a field house for university purposes, and completing the memorial union, and to enable the construction, financing and ultimate acquisition thereof, the regents are authorized and empowered to lease university lands to a nonprofit sharing corporation or corporations for a term not exceeding fifty years, upon condition that such corporation or corporations shall construct on such leased land such building, improvements or equipment for dormitories, commons, field house, or addition to the memorial union, as the regents shall designate or approve, and shall lease the same to the regents upon satisfactory terms as to the current rental, maintenance, and ultimate purchase by the regents. For the purpose of equipping the memorial union, the regents are authorized and empowered to lease the lands and the memorial union buildings now under construction to a nonprofit sharing corporation or corporations for a term not exceeding fifty years, upon condition that such corporation or corporations shall completely equip and furnish such memorial union building and lease the same so equipped and furnished to the regents upon such terms as to the current rental, maintenance and ultimate purchase by the regents, as may be in the best interests of the university in the judgment of the regents. Revenues derived from the operation by the regents of such dormitories, commons, memorial union, or field house shall be applied to the payment of such rentals, any surplus which from time to time may accrue to be applied toward the purchase price of the building, equipment, or improvements, or accumulated for subsequent application upon the purchase price. The regents are authorized and empowered to enter into such leases or contracts with such corporation or corporations for the above purposes as they shall deem for the best interest of the university; provided, that nothing herein contained shall authorize the regents to incur any state debt for the construction of such buildings, equipment or improvements. The plans for buildings and all contracts and leases made pursuant to this subsection shall before they are finally adopted or become effective be submitted to the state engineer and the governor and have their written approval. Such buildings, equipment and improvements so erected on university lands and devoted to university purposes, and the leasehold interest in such lands shall be exempt from taxation.

(7) The regents are authorized to invest any of the surplus moneys designated in subsection (11) of section 20.41 in such securities as are legal for trust fund investments; or to invest such funds, or any part thereof, in the senior or junior bonds or obligations which may be issued by such nonprofit sharing corporation or corporations as may be contracted with by the regents for the construction or equipment of dormitories, commons or field house as provided in subsection (6) of this section, which bonds or obligations shall be secured by a mortgage or pledge of the buildings or improvements erected or to be erected by such corporation or corporations and by a mortgage or pledge of its leasehold interest. Any interest on any of such bonds or securities shall when received be added to the revolving funds and may be used for the purposes set forth in this subsection. [*Stats. 1915 s. 381; 1917 c. 453 s. 2; 1919 c. 33; 1923 c. 405 s. 2; 1925 c. 32; 1927 c. 525 s. 2; 1927 c. 542 s. 2.*]

36.062. Scientific investigation encouraged. The board of regents shall have power and authority to encourage scientific investigation and productive scholarship, and to create conditions tending to that end. [*1919 c. 116 s. 11.*]

36.065. Gifts and Donations. (1) All gifts, grants, bequests and devises for the benefit or advantage of the university or any of its departments, colleges, schools, halls, observatories or institutions, or to provide any means of instruction, illustration or knowledge in connection therewith, whether made to trustees or otherwise, shall be legal and valid and shall be executed and enforced according to the provisions of the instrument making the same, including all provisions and directions in any such instrument for accumulation of the income of any fund or rents and profits of any real estate without being subject to the limitations and restrictions provided by law in other cases; but no such accumulation shall be allowed to produce a fund more than twenty times as great as that originally given.

(2) All such gifts, grants, devises or bequests may be made to the regents of the university or to the president or any officer thereof, or to any person or persons as trustees, or may be charged upon any executor, trustee, heir, devisee or legatee, or made in any other manner indicating an intention to create a trust, and may be made as well for the benefit of the university or any of its chairs, faculty, departments, colleges, schools, halls, observatories, or institutions or to provide any means of instruction, illustration or knowledge in connection therewith, or for the benefit of any class of students at the university or in any of its departments, whether by way of scholarship, fellowship, or otherwise, or whether for the benefit of students in any course, subcourse, special course, postgraduate course, summer school or teachers' course, oratorical or debating course, laboratory,

shop, lectureship, drill, gymnasium, or any other like division or department of study, experiment, research, observation, travel or mental or physical improvement in any manner connected with the university, or to provide for the voluntary retirement of any of its faculty.

(3) It shall not be necessary in case of any such gift, grant, devise or bequest to exactly or particularly describe the members of the class, group or nationality of students intended to be the beneficiaries, but it shall be sufficient to describe the class or group; and in case of any such gift, grant, devise or bequest the regents shall divide and graduate the students at the university into such classes or divisions as may be necessary to select and determine those belonging in the class intended by such gift, grant, devise or bequest, and shall determine what particular persons are within or intended by the same. It shall be sufficient in any such gift, grant, devise or bequest to describe the beneficiaries as belonging to a certain course, subcourse, department or division of the university, or as those pursuing certain studies, speaking or writing a certain language or languages, belonging to any nationality or nationalities, or to one of the sexes or by any other description, and in such case the regents shall determine the persons so described as hereinbefore provided. [1931 c. 4 s. 1, 3; 1931 c. 67 s. 84.]

36.07. University; janitors' salaries. The board of regents are empowered and directed to fix and establish the salaries of the janitors at the university so that the same shall be equivalent and equal to the salaries paid to janitors at the state capitol, and shall conform to the salary schedule for janitors established by the civil service commission. This section shall apply to employes doing janitor work in the Wisconsin general hospital and all other departments and divisions of the university regardless of the designation given to their positions. [Stats. 1915 s. 381m; 1917 c. 453 s. 2; 1929 c. 255.]

36.08. Use of income; addition of other colleges. For the erection of suitable buildings and the purchase of apparatus, a library, cabinets and additions thereto, the board of regents are authorized to expend such portion of the income of the university fund as is appropriated by the legislature for such purposes; and if they deem it expedient may receive in connection with the university any college in this state upon application of its board of trustees; and such college so received shall become a branch of the university and be subject to the visitation of the regents. [Stats. 1915 s. 382; 1917 c. 453 s. 2.]

36.09. Reports and printing thereof. At the close of each biennial fiscal term the regents through their president shall make a report in detail to the governor and the legislature

exhibiting the progress, condition and wants of each of the colleges embraced in the university, the course of study in each, the number of instructors and students, the amount of receipts and disbursements, together with the nature, cost and results of all important investigations and experiments and such other information as they may deem important, one copy of which shall be transmitted free by the secretary of state to all colleges endowed under the provisions of the act of congress entitled, "An act donating land to the several states and territories which provide colleges for the benefit of agriculture and the mechanic arts," approved July 2, 1862, and also one copy to the secretary of the interior as provided in said act. The board shall also report to the governor as often as may seem desirable the important results of investigations conducted by the director of Washburn observatory and by other investigators connected with the university, and also the results of such experiments therein relating to agriculture or the mechanic arts as said board may deem to be of special value to the agricultural and mechanical interests of the state. With the approval of the governor such number of copies as he shall direct, and of the Washburn observatory reports not more than seven hundred copies, may be printed by the state printer in separate form on good paper and with such appropriate quality of binding as the commissioners of public printing shall order. Eight hundred copies of each of said reports, when so directed by the governor, except those of the Washburn observatory, shall be delivered to the legislature and the remainder be used in exchange for the publications of other institutions and for such other public purposes as the regents may order. [*Stats. 1915 s. 383; 1917 c. 453 s. 2.*]

36.10. Receipts and disbursements; accounts; secretary's bond. All moneys which shall be derived to the university from gifts or other bounties, from fees of students in any form less any rebates allowed under authority of the board, from sales of farm products or any articles of personal property of whatever kind, from publications or advertisements in publications of the university, from fees for services rendered in any manner, from sales or rents of real property, or from any source whatever other than in cases by law required to be paid to the state treasurer, may be paid to the secretary of the board in all cases where the board shall authorize him to receive the same; and such secretary shall at least as often as once a week pay into the state treasury the entire amount of such receipts by him, and shall on or before the tenth day of each calendar month deliver to the state treasurer an itemized account of such receipts during the preceding calendar month, showing the amount of each sum so received by him, the date thereof, the

person from whom received, for what received, and the particular fund or account to which the same belongs; save that the details of small receipts may be omitted and the account made summary in such cases and to such extent as the secretary of state shall prescribe by forms therefor; and shall verify the correctness thereof by his affidavit thereto appended; and a duplicate thereof he shall at the same time file with the secretary of state. Such account shall be made upon forms to be prepared and furnished by the secretary of state. The regents may require of their secretary such bond, in such sum and with such sureties as they shall think fit and its renewal when deemed desirable; and may prescribe regulations for the discharge of all such duties not inconsistent with law. The secretary of state shall audit and give his warrant on the state treasurer for all accounts certified to him by the board or its executive committee, in the manner herein provided. All salaries for instructional or administrative service, and also allowances to fellows and scholars, which have been fixed by the board, shall be certified at periodical intervals according to the laws of the board upon rolls showing the name of the person entitled to receive the same, the amount of his fixed annual salary or allowance and that the sum so certified is then due him according to the method of periodical payment established by the board; upon which certified roll the secretary of state shall issue his warrant to each person therein named for the amount so certified to be due to him. Payments to janitors, laborers and all other employés and also to all persons from whom milk and products for the dairy are purchased shall be made upon rolls showing the name of the party entitled, for what service or object, to what fund chargeable, and the amounts respectively due each; which shall be likewise certified to the secretary of state to be correct and due and he shall issue thereon his warrant for the amount due each person upon such roll to each such person. Every other claim or account shall state the nature and particulars of the service rendered or material furnished and be verified by the affidavit of the claimant or his agent and filed with the secretary of the regents, and a roll, showing the name of each such person, for what service or object, to what fund chargeable, and the amount allowed to and due him, shall be certified as aforesaid to the secretary of state; upon which he shall issue his warrant for the proper amount to the person entitled thereto. The board may enact laws to govern all such business not inconsistent with law; and all forms shall be prepared and furnished by the secretary of state. All warrants issued pursuant to this section shall be labeled "University Warrant" and numbered in consecutive order. All gifts, bounties and moneys paid in and appropriations made by law for the university, its endowment, aid

or support, when received by the state treasurer shall be at once credited to the proper fund, and if received as part of the general fund shall be forthwith transferred by warrant to the proper university account, and shall all thenceforth be held solely for the respective uses to which the same is by law appropriated, and shall never be employed, diverted to, or paid out for any other use or purpose. [*Stats. 1915 s. 383a; 1917 c. 453 s. 2.*]

36.11. University accounts. (1) Biennial Examination. The board of regents of the state university shall cause all of the financial transactions and accounts of or relating to the state university in any of its departments at the close of each fiscal year to be fully and thoroughly examined subject to the provisions of chapter 15 of the statutes.

(2) When Made. Such examinations shall be commenced immediately after the close of the fiscal year and be completed as soon as practicable.

(3) Report. Upon the completion of such examination a full and detailed report thereof shall be made by such auditor to the governor. The expense of such audit shall be charged against the proper appropriation for the board of regents of the university. [*Stats. 1915 s. 383m; 1917 c. 453 s. 2; 1917 c. 628 s. 7.*]

36.12. President of the university. The president of the university shall be president of the several faculties and the executive head of the instructional force in all its departments; as such he shall have authority, subject to the board of regents, to give general direction to the instruction and scientific investigations of the several colleges, and so long as the interests of the institution require it he shall be charged with the duties of one of the professorships. The immediate government of the several colleges shall be intrusted to their respective faculties; but the regents shall have the power to regulate the courses of instruction and prescribe the books or works to be used in the several courses, and also to confer such degrees and grant such diplomas as are usual in universities or as they shall deem appropriate, and to confer upon the faculty by by-laws the power to suspend or expel students for misconduct or other cause prescribed in such by-laws. [*Stats. 1915 s. 384; 1917 c. 453 s. 2.*]⁴

Other sections of the 1931 Wisconsin Statutes relating to the University of Wisconsin, not reproduced here, are as follows:

- 36.13 University; courses, departments, page 415.
- 36.14 Departments, what embraced in, page 415.
- 36.15 University: open to both sexes; military instruction, page 416.
- 36.16 Nonresident tuition at University, page 416.

⁴*Compiled Statutes of Wisconsin*, 1929, Chap. 36, pp. 442-46.

- 36.17 Summer Session, educational extension, correspondence teaching, page 416.
- 36.18 Training for public service, page 416.
- 36.19 Agricultural demonstration stations, page 416.
- 36.20 State Soils Laboratory, page 417.
- 36.21 Hog Cholera serums, page 417.
- 36.215 Agricultural experiments and demonstrations, Farmers' institutes, page 418.
- 36.22 Pharmaceutical Experiment Station, page 418.
- 36.225 State Laboratory of Hygiene, page 418.
- 36.226 Toxicologist, duties, page 418.
- 36.227 Psychiatric Institute, page 419.
- 36.23 Geological and Natural History survey, page 420.
- 36.24 State Geologist, page 420.
- 36.25 Cooperative agreements with municipalities, page 420.
- 36.26 Reports and their distribution, page 420.
- 36.27 Dissemination of material collected, page 420.
- 36.28 Soil Survey and map, page 420.
- 36.29 Investigations; mapping; surveys; reports, page 421.
- 36.30 Survey of mineral lands, mines and water powers, page 421.
- 36.31 State of Wisconsin General Hospital established, page 421.
- 36.32 Children's Orthopedic Hospital, page 422.

JUDICIAL DECISIONS

Incidental Fees. Section 388, Revised Statutes of Wisconsin, which provided that no student who had been a resident of the state for one year next preceding his admission to the state university should be required to pay any fees for tuition, except in the Law Department and for extra studies, was construed as prohibiting only fees for instruction, and not charges made to meet incidental expenses. The heating and lighting of public halls of the university being necessary and convenient for the accomplishment of the object of the institution, the Board of Regents was held authorized to exact from each student in attendance a fractional share of the expenses of such heating and lighting, as an incidental fee. *State ex rel. Priest v. Regents of the University of Wisconsin*, 54 Wis. 159, 11 N.W. 472 (1882).

Professor's Contract. A professor in the state university is not a public officer in the sense that his employment does not

create a contract between himself and the Board of Regents. Hence a professor can not be removed before the expiration of his term of service by an ordinance abolishing his position. *Butler v. Regents of University*, 32 Wis. 124 (1873).

Constitutionality of Dormitory Construction Plan. Section 36.06 (6), (7) authorizing the construction of dormitories and a field house to be paid for out of revenues derived from their operation by the Regents, does not create an indebtedness of the state and does not conflict with Article 8 of the Constitution of Wisconsin, which prohibits the incurring of state debts aggregating in excess of \$100,000 except for certain enumerated purposes. In the course of its opinion on this question, the court remarks: "The growth of that institution (the University of Wisconsin) continuously reveals increasing necessities, calling for construction of additional buildings and the expenditure of moneys, which the Legislature is reluctant to appropriate because of the attendant increasing tax burdens. In this situation the Legislature has applied to public necessities some of the financial genius which we find continually displayed in private business, with the thought of financing necessary undertakings by the pledging of future earnings arising from the operation of such enterprises." *Loomis v. Callahan*, 196 Wis. 518, 220 N.W. 816 (1928).

UNIVERSITY OF WYOMING

LARAMIE, WYOMING

A state university founded in 1886, in pursuance of an act of Congress of 1881 which gave to the Territory of Wyoming 46,080 acres of Federal lands for the purpose. The university is also the beneficiary of the 90,000 acres of agricultural college lands granted to Wyoming under the Morrill Act of 1862. Consists of five colleges: Liberal Arts, Agriculture, Engineering, Education, and Law. Endowment, \$2,264,000. Annual expenditures in 1930 were \$1,142,000, of which \$424,000 came from the state of Wyoming in the form of legislative appropriations, \$186,000 from Federal appropriations, and nearly \$90,000 from Federal oil royalties. The establishment and location of the institution is confirmed in the state constitution, but its governing board is expressly subjected to the authority of the legislature.

LAWS RELATING TO THE UNIVERSITY OF WYOMING

CONSTITUTIONAL PROVISIONS, 1889¹

ARTICLE VII

EDUCATION

SECTION 1. Public Schools. The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require and the means of the state allow, and such other institutions as may be necessary.

SECTION 12. Sectarianism prohibited. No sectarian instruction, qualifications or tests shall be imparted, exacted, applied or in any manner tolerated in the schools of any grade or character controlled by the state, nor shall attendance be required at any religious service therein, nor shall any sectarian tenets or doctrines be taught or favored in any public school or institution that may be established under this constitution.

THE UNIVERSITY

SECTION 15. Establishment of university. The establishment of the University of Wyoming is hereby confirmed, and said institution, with its several departments, is hereby declared to be the University of the State of Wyoming. All lands which have been heretofore granted or which may be granted hereafter by congress unto the university as such, or in aid of the instruction to be given in any of its departments, with all other grants, donations, or devises for said university, or for any of its departments, shall vest in said university, and be exclusively used for the purposes for which they were granted, donated or devised. The said lands may be leased on terms approved by the land commissioners, but may not be sold on terms not approved by congress.

SECTION 16. Tuition free. The University shall be equally open to students of both sexes, irrespective of race or color; and, in order that the instruction furnished may be as nearly free as possible, any amount in addition to the income from its grants of lands and other sources above mentioned, necessary

¹*Wyoming Compiled Statutes, Annotated, 1920*, pp. 53-56. Mullen, W. E., and Swainson, C. A., Sheridan, Wyoming: The Mills Company, 1920.

to its support and maintenance in a condition of full efficiency shall be raised by taxation or otherwise, under provisions of the legislature.

SECTION 17. Government of university. The legislature shall provide by law for the management of the university, its lands and other property by a board of trustees, consisting of not less than seven members, to be appointed by the governor by and with the advice and consent of the senate, and the president of the university, and the superintendent of public instruction, as members *ex officio*, as such having the right to speak, but not to vote. The duties and powers of the trustees shall be prescribed by law.

SECTION 23. Permanent location of. The legislature shall have no power to change or to locate the seat of government, the state university, insane asylum, or state penitentiary, but may after the expiration of ten (10) years after the adoption of this constitution, provide by law for submitting the question of the permanent locations thereof, respectively, to the qualified electors of the state, at some general election, and a majority of all votes upon said question cast at said election, shall be necessary to determine the location thereof; but for said period of ten (10) years, and until the same are respectively and permanently located, as herein provided, the location of the seat of government and said institutions shall be as follows: The seat of government shall be located at the city of Cheyenne, in the county of Laramie. The state university shall be located at the city of Laramie, in the county of Albany. The insane asylum shall be located at the town of Evanston, in the county of Uinta. The penitentiary shall be located at the city of Rawlins, in the county of Carbon; but the legislature may provide by law that said penitentiary may be converted to other public uses. The legislature shall not locate any other public institutions except under general laws, and by vote of the people.

STATUTORY PROVISIONS²

CHAPTER 41

THE UNIVERSITY OF WYOMING

SECTION 465. Establishment. There is established in this state, at the city of Laramie, an institution of learning under the name and style of "The University of Wyoming." [L. 1886, c. 37, sec. 34; R. S. 1887, sec. 3698; L. 1890-91, c. 75, sec. 1; R. S. 1899, sec. 485; C. S. 1910, sec. 410.]

²*Op. cit.* Section numbers as given here. Sections 483-497, inclusive, relating to permanent school funds and to agricultural experiment stations and extension services, have been omitted.

SECTION 466. Object of. The objects of such university shall be to provide an efficient means of imparting to young men and young women, without regard to color, on equal terms, a liberal education, together with a thorough knowledge of the various branches connected with the scientific, industrial and professional pursuits. To this end it shall embrace colleges or departments of letters, of science, and of the arts together with such professional or other departments as in course of time may be connected therewith. The department of letters shall embrace a liberal course of instruction in language, literature and philosophy, together with such courses or parts of courses in the college or department of science as are deemed necessary. [L. 1886, c. 37, sec. 35; R. S. 1887, sec. 3699; L. 1890-91, c. 75, sec. 2; R. S. 1899, sec. 486; C. S. 1910, sec. 411.]

SECTION 467. Departments. The college, or department of science, shall embrace courses of instruction in the mathematical, physical and natural sciences, together with such courses in language, literature and philosophy as shall constitute a liberal education. The college or department of the arts shall embrace courses of instruction in the practical and fine arts; especially in the applications of science to the arts of mining and metallurgy, mechanics, engineering, architecture, agriculture and commerce, together with instruction in military tactics, and in such branches in the department of letters, as are necessary to a proper fitness of students for their chosen pursuits, and as soon as the income of the university will allow, in such order as the wants of the public shall seem to require, the said courses in the sciences and their practical applications shall be expanded into full and distinct schools or departments. [L. 1890-91, c. 75, sec. 2; R. S. 1899, sec. 487; C. S. 1910, sec. 412.]

SECTION 468. Board of trustees. The government of the university shall vest in a board of nine trustees to be appointed by the governor, three and only three, of whom shall at all times be residents of the county of Albany, together with the president of the university and the state superintendent of public instruction, as members *ex officio* as such having the right to speak, but not to vote. [L. 1890-91, c. 75, sec. 3; R. S. 1899, sec. 488; C. S. 1910, sec. 413.]³

³The statutory laws from the compiled statutes of 1920, reproduced herein, are, with the exception of certain later supplementary acts, the law as enacted in 1891 (*Laws of Wyoming*, 1891, Chap. 75). By an act of 1921, (*Laws of Wyoming*, 1921, p. 166) section 468 was amended and re-enacted as follows:

"Section 468. The government of the University shall vest in a board of nine trustees to be appointed by the Governor, not more than three of whom may be residents of any one county of the State, together with the Governor, the President of the University and the State Superintendent of Public Instruction, as members *ex officio* as such having the right to speak, but not to vote. A majority of said board shall constitute a quorum."

HISTORY

The University of Wyoming was established by an act of 1886, "To provide for the erection of a capital building at the capital of the Territory, and for other purposes" (*Session Laws of Wyoming Territory*, 1886, pp. 77-88). This act created a special building commission composed of three residents of the City of Laramie to attend to the construction of a university building not to exceed fifty thousand dollars cost. The same act also made full provision for the government of the University, as follows:

SEC. 34. There shall be established in this Territory an institution under the name and style of "The University of Wyoming," to be located in or near the City of Laramie, in the manner hereinafter named.

SEC. 35. The objects of such university shall be to provide an efficient means of imparting to young men and young women, on equal terms, a liberal education and thorough knowledge of the different branches of literature, the arts and sciences, with their varied applications.

SEC. 36. The government of the university shall be vested in a board of seven trustees, three of whom shall at all times be residents of the City of Laramie aforesaid.

SEC. 37. Such board of trustees shall be authorized, whenever it deems the same expedient, to incorporate under the general corporation laws of this Territory, and may thereby acquire, in addition to the powers herein named, the general powers of a body politic and corporate.

SEC. 38. The term of office of such trustees shall be four years, except as provided in the next two succeeding sections.

SEC. 39. It shall be the duty of the governor, during the present session of the Legislative Assembly, to nominate, and by and with the advice and consent of the Legislative Council, to appoint seven residents of the Territory as members of said board of trustees, three of whom shall serve for two years, and two of whom shall serve for four years, and two of whom shall serve for six years, and hereafter, during the session of each succeeding Legislative Assembly, the governor shall nominate, and by and with the advice and consent of the Legislative Council appoint successors to such of said trustees whose terms of office shall have expired or will expire before the next session of the Legislative Assembly.

SEC. 40. Any vacancy in the said board of trustees, caused by death, resignation, removal from the Territory or otherwise, shall be filled by appointment, to be made by the governor, which appointment shall continue until the next session of the Legislative Assembly, and no longer.

SEC. 41. A majority of the members of such board of trustees shall constitute a quorum for the transaction of business, and said board shall hold regular meetings on the first Mondays of January, April, July and October of each year.

SEC. 42. The said board shall have power—

First—to elect one of its members president of such board.

Second—to appoint a secretary and treasurer from among the members of such board, and such other officers as it may deem necessary for the good order and government of said university, and to prescribe their duties and fix their compensation.

Third—To provide by resolution or otherwise for special meetings of such board.

Fourth—To possess and use for the benefit of the university the university building and site hereinbefore named, when said building shall be completed.

Fifth—To take and hold for the benefit of the university, any real or personal estate, and to dispose of the same in such manner as it may deem most conducive to the interests of the university.

Sixth—To expend the income placed under its control by the provisions of this act, and such other funds as it may receive, in such manner as shall best promote the interest and prosperity of the university.

Seventh—To elect a president and such professors, tutors, and other officers of the faculty of such university as shall be necessary, who shall hold their offices during the pleasure of the trustees.

Eighth—To prescribe the duties, salaries and emoluments of such professors, tutors and officers.

Ninth—To prescribe the course of study and discipline to be observed in the university and the price of tuition.

Tenth—To make all by-laws and rules necessary and proper to carry into effect the powers herein conferred.

SEC. 43. The president, professors and tutors of such university shall be styled the faculty, and shall have power—

First—To enforce the rules and regulations adopted by said trustees for the government of the students.

Second—To reward and censure students as they may deserve, and to suspend those who continue refractory, until a determination of the board of trustees can be had thereon.

Third—To grant and confer, by and with the consent and approbation of the trustees, such literary honors and degrees as are usually granted and conferred in other colleges and universities in the United States, and in testimony thereof to give suitable diplomas, under the seal of the Territory and signatures of the faculty.

SEC. 44. No member of the faculty of such university shall, while acting in that capacity, be a trustee.

SEC. 45. No religious qualification or test shall be required of any student, trustee, president, professor, tutor or officer of such university, or as a condition for admission for any privilege in the same; and no sectarian tenets or principles shall be taught, instructed or inculcated at said university by any president, professor or tutor therein.

SEC. 46. The trustees shall provide for the tuition, free of charge, of such students from each county as may be selected and appointed by the board of the county commissioners therein.

SEC. 47. In the management and application of any property, real or personal, granted, devised or bequeathed to the use of said university, or the proceeds thereof, the trustees shall conform to the will and directions of the donor thereof, if any such shall have been connected therewith.

SEC. 48. The said trustees shall require their treasurer to give a bond, with sureties to be approved by them, in double the sum likely to come into his hands.

SEC. 49. The secretary of the board of trustees shall keep a true record of the proceedings of said board, and make and certify to copies thereof. He shall also keep an account of the students in said university, according to their classes, showing their respective ages and places of residence.

SEC. 50. The treasurer of said board of trustees shall keep full, true and faithful accounts of all moneys received by him as such treasurer, and of all expenditures and disbursements thereof; he shall pay out the moneys received by him as such treasurer, on the order of the board of trustees, certified by their secretary; he shall keep accurate accounts with all persons having dealings with such university; shall collect the tuition fees due the same, and shall submit a full and proper statement of the finances of the university and of his receipts and disbursements, at each regular meeting of the board of trustees, and at such other times as said board may direct.

SEC. 51. A board of visitors, to consist of three persons, shall be appointed biennially, at the commencement of the collegiate year, by the governor of the territory. It shall be their duty to make a personal examination into the state and condition of the university, and all its affairs, twice at least in each year, and report the result to the governor, suggesting such improvements as they may deem proper, which report shall be submitted to the Legislative Assembly at its next session. Such visitors shall receive no compensation for their services.

SECTION 469. Appointment—Term of office. The term of office of the trustees appointed shall be six years. During each session of the legislature, the governor shall nominate, and by and with the advice and consent of the senate, appoint successors to the three trustees whose term of office shall have expired, or will expire before the next session of the legislature. Any vacancy in the board of trustees caused by death, resignation, removal from the state or otherwise, shall be filled by appointment to be made by the governor, which appointment shall continue until the next session of the legislature, and no longer, but no member of the faculty, while holding that position, shall ever be appointed a trustee. [L. 1890-91, c. 75, sec. 4; R. S. 1899, sec. 489; C. S. 1910, sec. 414.]

SECTION 470. Powers of the board of trustees. The board of trustees and their successors in office shall constitute a body corporate by the name of "The Trustees of the University of Wyoming." They shall possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law, and shall have the custody of the books, records, buildings and all other property of the university. The board shall have power to elect a president, secretary and treasurer, who shall perform such duties as are prescribed in the by-laws of the board. The treasurer shall execute such bond, with approved sureties in double the sum likely to come into his hands, for the faithful discharge of his duties as the board may require. The term of office of said officers, their duties severally, and the times for holding meetings, shall be fixed in the by-laws of the board. A majority of the board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time, and all routine business may be entrusted to an executive committee of three members, subject to such conditions as the by-laws of the board shall prescribe. The actual and necessary traveling expenses of non-resident mem-

SEC. 52. To provide an income for such university there shall be assessed upon all taxable property of the Territory, in each year after the passage of this act, a tax of one-fourth of a mill on each and every dollar of the assessed valuation of such property, which tax shall be levied, collected and paid to the territorial treasurer in the manner provided by law for the levy, collection and payment of other territorial taxes. Said tax, when so paid to the territorial treasurer, shall be paid to the treasurer of said board of trustees upon the warrant of the territorial auditor, to be issued upon request of said board of trustees.

SEC. 53. Before the plans and specifications for the university building hereinbefore named shall be adopted by the "university building commission," the same shall be submitted to and approved by said board of trustees.

SEC. 54. The said university shall be opened for the admission of students at a time to be determined by said board of trustees.

SEC. 55. This act shall take effect and be in force from and after its passage.

Approved March 4, 1886.

bers in attending the annual meeting of the board may be audited by the auditing committee thereof, and paid by warrant on the treasurer out of the general fund of the university. [L. 1886, c. 37, sec. 42; R. S. 1887, sec. 3706; L. 1890-91, c. 75, sec. 5; R. S. 1899, sec. 490; C. S. 1910, sec. 415.]

SECTION 471. Board to prescribe government. The board of trustees shall prescribe rules for the government of the university in all its branches, elect the requisite officers, professors, instructors and employees, any of whom may be removed for cause, as well as fix the salary and term of office of each, prescribe the studies to be pursued and the textbooks to be used, and determine the qualifications of applicants for admission to the various courses of study; but no instruction either sectarian in religion or partisan in politics, shall ever be allowed in any department of the university, and no sectarian or partisan test shall ever be exercised or allowed in the appointment of trustees, or in the election or removal of professors, teachers or other officers of the university or in the admission of students thereto, or for any purpose whatsoever. The board of trustees shall also have power to confer such degrees and grant such diplomas as are usual in universities, or as they shall deem appropriate, through by-laws, to confer upon the faculty the power to suspend or expel students for causes therein prescribed; to possess and use for the benefit of the institution, all property of the university; to hold, manage, lease, or dispose of, according to law, any real or personal estate, as shall be conducive to the welfare of the institution; to expend the income placed under their control, from whatever source derived, and finally to exercise any and all other functions properly belonging to such a board and necessary to the prosperity of the university in all of its departments. [L. 1890-91, c. 75, sec. 6; R. S. 1899, sec. 491; C. S. 1910, sec. 416.]

SECTION 472. Report of trustees. At the close of each scholastic year, (June 30), the trustees of the University of Wyoming, through their president, shall make a report in detail to the governor, exhibiting the progress, condition and wants of the university, and of each school or department thereof; the course of study in each, the number of professors and students, together with the nature, costs and results of important investigations, and such other information as they deem important, or as may be required by any law of this state, or of the United States. Accompanying such report, and as a part thereof, the secretary and treasurer of the board of trustees shall unite in an itemized report showing the amount of receipts and disbursements for the year, as had and made by said board, showing the appropriation resolution for that year, showing clearly the purposes for which the same have been ex-

pended, and the amount thereof expended upon each school or department of work, including the experiment station. Such reports are to be printed and not less than one hundred copies thereof filed with the secretary of state for distribution among the members of the legislature and other public officers. [L. 1899, c. 51, secs. 1, 2; R. S. 1899, sec. 492; C. S. 1910, sec. 417.]

SECTION 473. The faculty and its power. The president and professors of the university shall be styled "the faculty," and shall have power as such body, to enforce the rules and regulations adopted by the trustees for the government of students, to reward and censure students as they may deserve, and generally to exercise such discipline, in harmony with the said regulations, as shall be necessary for the good order of the institution; to present to the trustees for degrees and honors such students as are entitled thereto, and in testimony thereof, when ordered by the board, suitable diplomas, certificates or other testimonials under the seal of the university, and the signatures of the faculty. When, in course of time, distinct colleges or departments of the university are duly organized and in active operation, the immediate government of such departments shall, in like manner, be entrusted to their respective faculties. [L. 1890-91, c. 75, sec. 8; R. S. 1899, sec. 493; C. S. 1910, sec. 418.]

SECTION 474. Duty and power of president. The president of the university shall be president of the several faculties and the executive head of all the departments. As such, subject to the board of trustees, he shall have authority to give general direction to the instruction and investigations of the several schools and departments, and, so long as the interests of the institution require it, he may be charged with the duties of one of the professorships. [L. 1890-91, c. 75, sec. 9; R. S. 1899, sec. 494; C. S. 1910, sec. 419.]

SECTION 475. Secretary shall take oath of office. The secretary of the board of trustees of the university of Wyoming, shall be required before entering upon the duties of said office, to take the oath of office provided for elective officers under the constitution of this state. [L. 1897, c. 24, sec. 1; R. S. 1899, sec. 495; C. S. 1910, sec. 420.]

SECTION 476. Secretary may administer oaths. The secretary of the board of trustees of the university of Wyoming, is hereby authorized to administer oaths and affirmations to any person or persons, in connection with the business of the said university of the state of Wyoming. [L. 1897, c. 24, sec. 2; R. S. 1899, sec. 496; C. S. 1910, sec. 421.]

SECTION 477. Tuition. To the end that none of the youth of the state who crave the benefits of higher education may be denied, and that all may be encouraged to avail themselves of

the advantages offered by the university, tuition shall be as nearly free as possible, and it shall be wholly free to such students from each county as are selected and appointed by the board of county commissioners therein. [L. 1890-91, c. 75, sec. 10; R. S. 1899, sec. 497; C. S. 1910, sec. 422.]

SECTION 478. Diploma. After any student has been graduated from either of the chief departments of the university, and received the degree of bachelor of arts, of letters, of philosophy, or of science, and has had a subsequent experience as a successful teacher of a public school in Wyoming for a period of one school year, the state superintendent of public instruction shall have authority to countersign the diploma of such teacher after such examination as to moral character, learning and ability to teach as to the said superintendent may seem proper; and such graduate so tested shall, after his diploma has been so countersigned by the state superintendent, as aforesaid, be deemed qualified to teach any of the public schools of this state, and the diploma so countersigned shall be his certificate of such qualification until annulled by the state superintendent of public instruction. [L. 1890-91, c. 75, sec. 11; R. S. 1899, sec. 498; C. S. 1910, sec. 423.]

SECTION 479. Acceptance of congressional appropriation. The university of Wyoming having been designated by the secretary of the interior as the proper institution to receive and expend the moneys appropriated by an act of congress, approved August thirtieth, eighteen hundred and ninety, entitled, "An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of congress, approved July second, eighteen hundred and sixty-two," until such time as there may be an agricultural college established in this state, separate and apart from said university of Wyoming, assent is hereby given to all the terms and conditions of the said act of congress and the grants of money authorized and made by said act are hereby assented to and accepted by the state of Wyoming. The treasurer of the state of Wyoming is hereby designated as the proper officer to accept and receive said moneys so granted by said act of congress, and to disburse the same in accordance with the provisions of sec. 2, of the said act of congress. [L. 1890-91, c. 74, secs. 1, 2; R. S. 1899, sec. 499; C. S. 1910, sec. 424.]

SECTION 480. Experiment stations—Appropriation. The university of Wyoming having been designated by the secretary of the interior as the proper institution to receive and expend the moneys appropriated by an act of congress approved August thirtieth, eighteen hundred and ninety, entitled "An

act to apply a portion of the proceeds of the public lands to the more complete endowment and support of colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of congress approved July second, eighteen hundred and sixty-two," until such time as there may be an agricultural college established in this state, separate and apart from the said university of Wyoming, assent is hereby given to all the terms and conditions of said act of congress, and grants of money authorized and made by said act of March second, eighteen hundred and eighty-seven, relative to the establishment of agricultural experiment stations, or any other act for like purposes, are hereby assented to and accepted by the state of Wyoming. Except where other designation is made by congress, all moneys granted or donated by congress in aid of scientific instruction or experimentation, and set apart by the legislature for such use by the university of Wyoming, shall be accepted and received by the state treasurer, and by him placed at the disposal of the board of trustees of the said university by transfer to the treasurer of said board, for disbursement in accordance with the provisions of the act or acts of congress aforesaid. [L. 1890-91, c. 75, sec. 13; R. S. 1899, sec. 500; C. S. 1910, sec. 425.]

SECTION 481. Legislature shall make appropriation. There shall be appropriations made by the legislature of the moneys intended for the support and maintenance of the university of Wyoming, and such appropriations shall specify as nearly and accurately as the same can be done, the specific purposes for which such moneys are intended and may be used. Such appropriations shall apply to and include all moneys received by the university from the United States for the endowment and support of colleges for the benefit of agriculture and mechanic arts; but moneys so received from the United States shall be appropriated, applied and used solely for the purpose specified in the acts of congress regulating the same. No expenditure shall be made in excess of such appropriation, and no moneys so appropriated shall be used for any purpose other than that for which they are appropriated. [L. 1895, c. 110, sec. 1; R. S. 1899, sec. 501; C. S. 1910, sec. 426.]

SECTION 482. Tax for university buildings—Levy—Expenditure. In order that the university of Wyoming may be kept in a condition of full efficiency as required by the terms of section sixteen of article seven of the constitution of the state of Wyoming, there shall be assessed upon all taxable property in the state in each year a tax of one-eighth of a mill, in addition to other levies or appropriations now authorized or to be authorized by law, upon each and every dollar, of the assessed valuation of such property, which tax shall be levied, collected,

and paid to the state treasurer in the manner provided by law for the levy, collection and payment of other state taxes. Said tax, when so paid to the state treasurer, shall be paid to the treasurer of the said board of trustees upon the warrant of the state auditor, to be issued upon request of said board of trustees. The proceeds of said tax shall be appropriated and expended by the said board of trustees for such permanent buildings and improvements as the said board in its discretion may deem necessary. Provided, however, that any revenue thus collected which shall be in excess of the amount required to meet the expenses of buildings and improvements in any given year, may be expended by said board for the maintenance of extension work in departments other than agriculture and home economics. [L. 1915, c. 42, sec. 1.]⁴

SECTION 701. Institutions land grant—Payment to university. That the treasurer of the state of Wyoming shall pay to the treasurer of the state university of Wyoming, from time to time each year as the same may accumulate in his hands, one-fourth of the receipts received from the leasing of the lands now remaining undistributed, as donated to the state of Wyoming for "state charitable, educational, penal and reformatory institutions" by section eleven of the act of congress of July 10, 1890, said funds, when so paid over, to be used by the board of trustees of the university in the maintenance and upbuilding of that institution, as its needs seem, to them, to require. [L. 1915, c. 142, sec. 1.]

SECTION 702. Permanent omnibus state land fund—Income divided. That any funds received from the sale of any of the lands mentioned in the above section shall be placed by the treasurer of the state in a fund, to be known as the Permanent Omnibus State Land Fund, to be invested as other moneys of the state of a permanent character are invested, and until otherwise provided by law, one-fourth of the income from such fund shall be paid by the treasurer of the state, as provided in section 701, to the treasurer of the university, and by the trustees of that institution expended for the maintenance and upbuilding of the university, pursuant to the act of donation. [L. 1915, c. 142, sec. 2.]

⁴The last two sentences of this section are now superseded by the relevant part of section 1 of chapter 79 of *Laws of Wyoming*, 1923, which reads as follows: "The proceeds of said tax shall be appropriated and expended by the said board of trustees for such permanent buildings, improvements, repairs and operations as the said board in its discretion may deem necessary. Said tax, when so paid to the state treasurer shall not be expended or disbursed except upon sworn itemized claims which shall be approved for payment by the president of said board of trustees, and thereupon shall be paid by the state treasurer upon warrant of the state auditor."

SECTION 2338. Normal department of state university.

The state superintendent of public instruction shall advise with the board of trustees of the state university in matters relating to the course of study in the state normal department of the state university. The superintendent of public instruction and the state board of education shall be the trustees of all other teacher training institutions which may hereafter be established. [L. 1919, c. 127, sec. 11.]

JUDICIAL DECISIONS

Federal Grants to the State. No particular institutions are entitled to the grants and appropriations made respectively by Act July 2, 1862, c. 130, 12 Stat. 503, granting lands or land scrip to the several states for the endowment, support, and maintenance of at least one college, where the leading object shall be to teach agriculture and the mechanic arts, etc., but the states take the property, charged with the duty to devote it to the purpose named. *State of Wyoming v. Irvine*, 27 S. Ct. 613, 206 U.S. 278, 51 L. Ed. 1063 (1907) affirming 14 Wyo. 318, 84 P. 90 (1906).

The University Both a Corporation and a State Agency. The University, though declared by statute to be a body corporate by specified name, is not separate from or independent of the state, but is so much a dependent part of it that, even upon a vesting of title in it of public lands of the state, the lands would still remain lands of the state. *Ross v. Trustees of University of Wyoming*, 31 Wyo. 464, 228 P. 642, denying rehearing 30 Wyo. 433, 222 P. 3 (1924).

Title to University Lands is in the State. In actions involving title or possession of lands granted by Congress for the support of the state university, the state is the real party in interest, since the grant was made to the state, to remain forever under the exclusive control of the state; and a suit to quiet title to university lands can not be maintained against the University of Wyoming as a body corporate, until the Legislature expressly directs the manner and designates the courts in which such suits can be brought. *Hjorth Royalty Company v. Trustees of University of Wyoming*, 30 Wyo. 309, 222 Pac. 9 (1924).

The University a Part of the State. "The trustees of the University of Wyoming" is a corporation created by statute

as an agency of the state, through which it manages the affairs of the state university. It is not expressly authorized to sue and be sued. Hence, in a suit against the corporation to enforce alleged contract rights, in which it is not alleged that the defendant has committed any act in violation of the complainant's rights, a Federal court is without jurisdiction, because the suit is in effect one against the state. The Eleventh Amendment to the United States Constitution provides that the jurisdiction of Federal courts shall not include cases wherein a state is being sued by a citizen of another state. *Fidelity and Deposit Company of Maryland v. Trustees of the University of Wyoming et al.*, 16 Fed. (2d) 150 (1926).

YALE UNIVERSITY
NEW HAVEN, CONNECTICUT

A privately endowed non-denominational university. Women are not admitted to the undergraduate schools. The Graduate and professional schools except Forestry are co-educational. Chartered as the Collegiate School of Connecticut in 1701. Named Yale College in 1718, and Yale University by act of the Connecticut General Assembly in 1887. Comprises: Yale College, Sheffield Scientific School, the School of Engineering, the Graduate School, the School of Medicine, the Divinity School, the School of Law, the School of Fine Arts, the School of Music, the School of Forestry, and the School of Nursing. In 1930-31 the endowment was approximately \$94,000,000, the gross income, \$8,500,000. The Graduate School granted the first Ph. D. in 1861 and the first M. A. for specific scholarly work in 1876. Women were first admitted to the Ph. D. in 1892, and to the M. A. in 1917. Yale is credited with having established the first respectable course of study for the degree of Doctor of Philosophy in the United States.

CHARTER OF YALE COLLEGE

[1745]

BY THE GOVERNOR AND COMPANY of his Majestie's
Colony of Connecticut in New-England in America.¹

*AN ACT for the more full and compleat Establishment of YALE
COLLEGE in New-Haven and for enlarging the Powers and
Privileges thereof.*

WHEREAS upon the Petition of several well disposed and Public-Spirited Persons expressing their Desire that full Liberty and Privilege might be granted unto certain Undertakers for the founding, suitably endowing and ordering a Collegiate School within this Colony wherein Youth might be instructed in the Arts and Sciences, the Governor and Company of the said Colony in General Court assembled at New-Haven on the Ninth Day of October, in the Year of our Lord one Thousand seven Hundred and one Granted unto the Rev'd Mes^{rs} James Noyes, Israel Chauncey, Thomas Buckingham, Abraham Peirson, Samuel Mather, Samuel Andrew, Timothy Woodbridge, James Pierpont, Noadiah Russel and Joseph Webb who were proposed to stand as Trustees, Partners or Undertakers for the said Society and to their Successors, full Liberty, Right and Privilege to Erect, Form, Direct, Order, Establish, Improve and at all Times in all suitable Ways to Encourage the said School in some convenient Place in this Colony and granted sundry Powers and Privileges for the Attaining the End aforesaid.

AND WHEREAS the said Trustees, Partners or Undertakers in pursuance of the aforesaid Grant Liberty and License, founded a Collegiate School at New-Haven, known by the Name of YALE COLLEGE² which has received the favourable Benefactions of many Liberal and Piously Disposed Persons, and under the Blessing of Almighty God has trained up many Worthy Persons for the Service of God in the State as well as in the Church.

AND WHEREAS the General Court of this Colony assembled at New-Haven the tenth Day of October in the Year of our Lord one Thousand Seven Hundred and Twenty three did Explain and Enlarge the aforesaid Powers and Privileges

¹*The Yale Corporation, Charter, Legislative Acts, By-Laws and Other Official Documents*, pp. 10–15. New Haven: Published by the University, 1928.

²*Ibid.* p. 20. Amended, 1887, by "Act Authorizing the name Yale University."

granted to the Aforesaid Partners Trustees or Undertakers and their Successors for the Purpose aforesaid; as by the respective Acts Reference thereto being had more fully and at large may appear.

AND WHEREAS the Rev'd Mes^{rs} Thomas Clap, Samuel Whitman, Jared Eliot, Ebenezer Williams, Jonathan Marsh, Samuel Cooke, Samuel Whittelsey, Joseph Noyes, Anthony Stoddard, Benjamin Lord and Daniel Wadsworth the present Trustees Partners and Undertakers of the said School, and Successors of those before mentioned, have Petitioned that the Said School with all the Rights, Powers, Privileges and Intrests thereof may be confirmed, and that such other additional Powers and Privileges may be granted as shall be necessary for the Ordering and managing the said School in the most Advantageous and beneficial Manner for the promoting all good Literature in the present and succeeding Generations.

Therefore The Governor and Company of his Majesties said English Colony of Connecticut in General Court assembled this Ninth Day of May, in the Year of our Lord one Thousand Seven Hundred and Fourty five Enact, Ordain, and Declare, and by these Presents it is Enacted, Ordained and Declared.

1. That the said Thomas Clap, Samuel Whitman, Jared Eliot, Ebenezer Williams, Jonathan Marsh, Samuel Cooke, Samuel Whittelsey, Joseph Noyes, Anthony Stoddard, Benjamin Lord, and Daniel Wadsworth shall be an Incorporate Society or Body Corporate and Politic and shall hereafter be called and known by the Name of THE PRESIDENT AND FELLOWS OF YALE COLLEGE in New-Haven, and that by the same Name they and their Successors shall and may have perpetual Succession, and shall and may be Persons in the Law capable to plead and be Impleaded, Defend and be Defended, and Answer and be answered unto; And also to have, take, possess, acquire, purchase or otherwise Receive Lands, Teneaments, Hereditaments, Goods, Chattels, or other Estates And the same Lands, Teneaments Hereditaments, Goods Chattels or other Estates to Grant, Demise, Lease, Use, Manage or Improve for the Good and Benefit of the said College According to the Tenor of the Donation, and their Discretion.³

³*Ibid.* p. 16. Amended, 1792, to include the Governor, Lieutenant Governor, and six senior assistants in the "Council of Connecticut". ("In May, 1819, at the request of the Corporation, by an Act of the General Assembly, the 'six senior assistants in Council' of the State were replaced, in the Corporation of Yale College, by the 'six senior senators',—this change being necessitated by the adoption of the new Constitution.")

Ibid. pp. 17-18. Amended, 1872, to permit Yale graduates of five or more years standing to elect six persons from among such graduates to be "Fellows of Yale College in the stead of the six senior senators of the State", to be enrolled by lot for terms of six, five, four, three, two, and one years respectively, and eligible for reelection.

2. That all Gifts, Grants, Bequests, and Donations of Lands, Teneaments or Hereditaments, of Goods and Chattels heretofore made to or for the Use, Benefit and Advantage of the Collegiate School aforesaid, whether the same be express'd to be made to the President or Rector, and to the rest of the Incorporate Society of Yale College or to the Trustees or Undertakers of the Collegiate School in New-Haven, or to the Trustees by any other Name, Stile or Title whatsoever, whereby it may be clearly known and understood that the true Intent and Design of such Gifts, Grants, Bequests and Donations was to or for the Use, Benefit and Advantage of the Collegiate School aforesaid, and to be under the Care and Disposal of the Governors thereof, shall be confirmed, and the same hereby are Confirmed, and shall be and Remain to and be Vested in The President and Fellows of the College aforesaid, and their Successors, as to the true and Lawfull Succesors of the Original Grantees.

3. That the said President and Fellows and their Successors shall and may hereafter have a Common Seal to serve and Use for all Causes, Matters and Affairs of them & their Successors, and the same Seal to alter, break and make new as they shall think fit.

4. That the said Thomas Clap shall be, and he is hereby Established the present President and the said Samuel Whitman, Jared Eliot, Ebenezer Williams, Jonathan Marsh, Samuel Cooke, Samuel Whittelsey, Joseph Noyes, Anthony Stoddard, Benjamin Lord and Daniel Wadsworth shall be, and they are hereby Established the present Fellows of the said College, and that they and their Successors shall continue in their Respective Places during Life, or until they or either of them shall Resign, or be Removed, or Displaced as in this Act is hereafter Expressed.

5. That there shall be a General Meeting of the President and Fellows of said College in the College-Library on the second Wednesday of September Annually, or at any other Time and Place which they shall see Cause to appoint, to Consult, Advise and act in and about the Affairs and Business of the said College, and that on any special Emergency the President and two of the Fellows or any four of the Fellows may appoint a Meeting at the said College, provided they give Notice thereof to the Rest by Letters sent and left with them or at the Places of their Respective Abode five Days before such Meeting, and that the President and six Fellows or in Case of the Death, Absence or Incapacity of the President, Seven Fellows convened as aforesaid (in which Case the Eldest Fellow shall preside) shall be deemed a Meeting of the President and Fellows of Said College, and that in all the Said Meetings the

Major Vote of the Mem^{brs} present shall be deemed the Act of the whole, & where an Equivote happens y^e President shall have a casting Vote.⁴

6. That the President and Fellows of the Said College and their Successors in any of their Meetings assembled as aforesaid, shall and may from Time to Time as Occasion shall Require Elect and appoint a President or Fellow in the Room and Place of any President or Fellow who shall Die, Resign or be Removed from his Office, Place or Trust (whom the said Governor and Company Hereby Declare for any Misdemeanour, Unfaithfulness, Default or Incapacity shall be Removable by the President and Fellows of the said College (six of them at lest concurring in such Act,) and shall have Power to appoint a Scribe or Register a Treasurer, Tutors, Professors, Steward and all such other Officers and Servants, usually appointed in Colleges or Universities, as they shall find necessary and think fit to appoint for the promoting good Literature, and the well ordering and managing the Affairs of said College; And them or any of them at their Discretion to Remove, and to prescribe & administer such forms of Oaths (not being contrary to the Laws of England or of this Colony) as they shall think proper to be administered to all the Officers and Instructors of the said College, or to such and so many of them as they shall think proper, for the faithful Execution of their Respective Places, Offices and Trusts.

7. That the present President and Fellows of said College and their Successors and all such Tutors, Professors and other Officers as shall be appointed for the Public Instruction and Government of said College, before they Undertake the Execution of their Respective Offices and Trusts, or within three Months after, shall Publicly in the College-Hall take the Oaths and subscribe the Declaration appointed by an Act of Parliament made in the first Year of King George Ist Entituled, An Act For The Further Security Of His Majestie's Person And Government, And The Succession Of The Crown In The Heirs Of The Late Princess Sophia Being Protestants, And For Extinguishing The Hopes Of The Pretended Prince Of Wales And His Open And Secret Abettors; That is to say, The President before the Governor, Deputy-Governor or any two of the Assistants of this Colony for the time being, and the Fellows, Tutors and other Officers before the President for the Time being, who is hereby impowered to Administer the same; An Entry of all which shall be made in the Records of said College.

8. That the President and Fellows shall have the Govern-

⁴*Ibid.* p. 17. Amended, 1838, to provide that a majority constitute a quorum, "provided there be present a majority of those who are by election successors of the original trustees thereof, and provided due notice of such meeting shall have been given to all the members of said corporation. . . ."

ment, Care and Management of the said College and all the Matters and Affairs thereunto belonging, and shall have Power from Time to Time as Occasion shall Require to make, ordain and establish all such wholesome and reasonable Laws, Rules and Ordinances, not Repugnant to the Laws of England nor the Laws of this Colony, as they shall think fit and proper for the Instruction and Education of the Students, and Ordering, Governing, Ruling and Managing the said College, and all Matters, Affairs and things thereunto belonging, and the same to Repeal and alter as they shall think fit, which shall be laid before this Assembly as often as Required, and may also be Repealed or Disallowed by this assembly when they shall think proper.

9. That the President of said College with the Consent of the Fellows shall have Power to give and confer all such Honours, Degrees or Licenses as are usually given In Colleges or Universities upon such as they shall think worthy thereof.

10. That all the Lands and Ratable Estate belonging to the said College not exceeding the Yearly Vallue of five Hundred Pounds Sterling, lying in this Government, and the Persons, Families and Estates of the President and Professors lying and being in the Town of New-Haven, and the Persons of the Tutors, Students & such and so many of the Servants of said College as give their constant Attendance on the Business of it, shall be freed and Exempted from all Rates, Taxes, Military-Service, Working at High-Ways, and other such like Duties and Services.⁵

11. And for the Special Encouragement and Support of said College this Assembly do hereby Grant unto the said President and Fellows and their Successors for the Use of the Said College, in Lieu of all former Grants, One Hundred Pounds Silver Money at the Rate of Six Shillings and Eight pence p^r Ounce, To be paid in Bills of public Credit or other Currency equivalent to the said Hundred Pounds (The Rate or Vallue thereof to be stated from Time to Time by this Assembly) In two Equal Payments in October and May annually, This Payment to continue During the Pleasure of this Assembly.⁶

⁵*Ibid.* p. 19. Amended, 1834 and 1882, to limit tax-free real estate holdings to that affording an income of not more than six thousand dollars.

⁶*Ibid.* p. 16. Act of 1792 appropriated "the sum of two thousand five hundred pounds lawful money" for the erection of buildings for Yale College and whatever residue there was from certain tax sources "as a fund for raising an annual revenue, forever hereafter, to be applied to, and for the support of necessary professors in the various arts and sciences, for the benefit of said college. . . ." This appropriation was contingent upon the acceptance by the Corporation of the provision in the act that the "Governor, Lieutenant Governor, and six senior assistants in the Council" be "trustees or Fellows of said College". [This Act was accepted by the Corporation, June 26, 1792.]

In Full Testimony And Confirmation of this Grant and all the Articles and Matters therein Contained The said Governor And Company Do hereby order that This Act shall be Signed by the Governor And Secretary and Sealed with the public Seal of the Colony, and that the Same or a Duplicate or Exemplification thereof shall be a sufficient Warrant to the said President And Fellows to hold, Use and Exercise all the Powers and Privileges therein Mentioned and Contained.

By Order of the said Governor and Company,
in General Court Assembled.

GEORGE WYLLYS, *Secrety*.

JONth LAW Gov^r

(SEAL)

JUDICIAL DECISIONS

Tax Exemption. Buildings used by the College exclusively as dormitories and dining halls for its students are within the meaning of section 3820 of the General Statutes of Connecticut, which exempts from taxation all buildings which are exclusively occupied as a college. Students' fees, whether apportioned to room rent or tuition, can not be treated as income of real estate; and land occupied by the plant of the College is not productive real estate, within the meaning of a statute providing that a college shall not hold real estate exempt from taxation which shall afford more than a specified annual income. *Yale University v. Town of New Haven*, 71 Conn. 316, 42 A. 87, 43 L.R.A. 490 (1899).

Tax Exemption for Sheffield Scientific School. A provision of the charter of 1882 of the Sheffield Scientific School regarding exemption from taxation, applies not merely to such property as is in actual use by the corporation, but also that of which the income is used for the promotion of science. *New Haven v. Sheffield Scientific School*, 59 Conn. 163, 22 Atl. 156 (1890).

Disposition of Federal Funds. A Connecticut legislative act of 1893 directing the state treasurer not to pay to Yale College the interest on the funds acquired by the state of Connecticut under the terms of the Morrill Act of 1862, until a new contract should be made with the College, was unconstitutional, being a plain breach of a pre-existing contract. The Col-

lege was entitled to an injunction restraining the state treasurer from paying the income of the fund to any other institution. However, since the Federal government can not compel a state to perform its contracts, the power of the Federal court was exhausted when it issued the injunction, and it could not give affirmative relief in the form of a decree ordering payment to Yale College. The question of whether Yale College had the same rights in funds appropriated by an act of Congress of 1890 was not decided. *Yale College v. Sanger*, (U.S.C.C.) 62 Fed. 177 (1894).

Note: Yale University has received no financial support from the Federal government nor from the state of Connecticut since 1893. On February 4, 1896, the state of Connecticut paid the university \$154,604.45 damages for the extinguishment of its rights under the contract mentioned in the above decision, this amount having been awarded by a commission set up for the purpose by Chapter 67, Connecticut Public Acts of 1893.

Exemption from Connecticut Inheritance Tax. A residuary bequest to Yale University from the estate of Justus S. Hotchkiss of New Haven was held exempt from the inheritance tax under Connecticut Public Acts of 1915, chapter 332, section 3, which exempts the passage of property by will or the law of descent and distribution from a resident of the state to corporations or institutions which receive financial aid from the state. Although the university receives no direct appropriations of public money, the general exemption from taxation which it enjoys is construed to be a form of financial aid from the state. *Corbin, Tax Commissioner v. Baldwin et al.*, 92 Conn. 99, 101 Atl. 834, Ann. Cas. 1918E 932 (1917).

Erection of Bridge Across Highway. Yale University, as owner of land on each side of the highway, and of the fee of the street, can not place a structure above the way for the purpose of connecting buildings on either side of it, without the consent of the Board of Aldermen of New Haven and the Inspector of Buildings. Any such structure erected above a highway without the consent of the duly appointed public officials is an encroachment upon the highway and a nuisance. *Yale University v. City of New Haven*, 104 Conn. 610, 134 Atl. 268, 47 A.L.R. 667 (1926).

PART III

APPENDICES

FEDERAL LEGISLATION AFFECTING LAND-GRANT COLLEGES

There are sixty-nine land-grant colleges in the United States and territories. Collectively these institutions comprise a national system of higher education which is peculiar to this country. The inauguration of this system was made possible by the enactment of the famous Morrill Act which became a law when it received the signature of President Lincoln, July 2, 1862. Eventually every state and territory accepted the provisions of this act, and founded or designated at least one college in accordance with its terms. In Massachusetts two institutions were designated to share the benefits of the act, and seventeen states of the South each have one land-grant institution for white students exclusively, and another for Negroes exclusively. In twenty-two states the land-grant college is a part of the state university, and some of these institutions are among the largest and best institutions of higher learning in the United States. Such, for example, are the universities of California, Illinois, Minnesota, and Wisconsin.

In twenty other states the land-grant college is located apart from the state university and is a separate institution. A few of these institutions have attained considerable size and won excellent reputations for the quality of their instruction, especially in agriculture, engineering, and other technological pursuits. Six states of the Northeast have no state universities, and consequently the land-grant colleges are either independent institutions, as in the case of the Massachusetts State College at Amherst, or operated in conjunction with a privately controlled institution, as in the case of Cornell University.

Fourteen land-grant institutions have been included in the list covered by this volume. Since the Federal legislation is applicable to all such institutions, it must be regarded as an

important part of the legal basis of the following fourteen:

- University of Arkansas
- University of California
- Cornell University
- University of Illinois
- Iowa State College
- University of Kentucky
- Massachusetts State College
- Massachusetts Institute of Technology
- Michigan State College of Agriculture
and Applied Science
- University of Minnesota
- University of Nebraska
- Purdue University
- University of Wisconsin
- University of Wyoming

It has been found impossible to include copies of each of the Federal acts relating to land-grant institutions in this volume, since a compilation of all the acts together with the numerous departmental rulings by which they have been interpreted makes a sizable volume in itself. The acts selected for inclusion here fall into two groups: (1) those relating to the endowment of the land-grant institutions, and (2) those relating to the endowment of agricultural experiment stations. From the first group the following have been selected:

- The First Morrill Act of 1862
- The Act of 1866 extending the time for the
establishment of land-grant colleges
- The Second Morrill Act of 1890
- The Nelson Amendment of 1908

The following acts have been selected from the second group:

- The Hatch Act of 1887
- The Amendment of 1888 to the Hatch
Act
- The Adams Act of 1906
- The Purnell Act of 1925

The most important omissions from the present compilation are the Smith-Lever Act of 1914, relating to cooperative extension work; the National Defense Act of 1916, as amended 1920, relating to military training in land-grant colleges; and the Smith-Hughes Vocational Education Act of 1917, relating to the preparation of teachers of vocational subjects for the public schools.

FEDERAL LEGISLATION AFFECTING LAND-GRANT COLLEGES¹

ACT OF 1862 DONATING LANDS FOR COLLEGES OF AGRICULTURE AND MECHANIC ARTS

FIRST MORRILL ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be granted to the several States, for the purposes hereinafter mentioned, an amount of public land, to be apportioned to each State a quantity equal to thirty thousand acres for each Senator and Representative in Congress to which the States are respectively entitled by the apportionment under the census of eighteen hundred and sixty: Provided, That no mineral lands shall be selected or purchased under the provisions of this act.

SECTION 2. *And be it further enacted, That the land aforesaid, after being surveyed shall be apportioned to the several States in sections or subdivisions of sections, not less than one-quarter of a section; and whenever there are public lands in a State subject to sale at private entry at one dollar and twenty-five cents per acre, the quantity to which said State shall be entitled shall be selected from such lands within the limits of such State, and the Secretary of the Interior is hereby directed to issue to each of the States in which there is not the quantity of public lands subject to sale at private entry at one dollar and twenty-five cents per acre to which said State may be entitled under the provisions of this act land scrip to the amount in acres for the deficiency of its distributive share; said scrip to be sold by said states and the proceeds thereof applied to the uses and purposes prescribed in this act and for no other use or purpose whatsoever: Provided, That in no case shall any State to which land scrip may thus be issued be allowed to locate the same within the limits of any other State or of any Territory of the United States, but their assignees may thus locate said land scrip upon any of the unappropriated lands of the United States subject to sale at private entry at one dollar and twenty-five cents, or less, per acre: And provided further, That not more than one million acres shall be located by such assignees in any one of the States: And provided further,*

¹The materials here reproduced are taken from the *Bulletin of Purdue University*, Vol. xxviii, No. 2, October, 1927, entitled *The University Code, Part I*. Only selected acts are here reprinted, and departmental rulings interpreting them in detail are omitted from this compilation.

That no such location shall be made before one year from the passage of this act.

SECTION 3. *And be it further enacted*, That all the expenses of management, superintendence, and taxes from date of selection of said lands, previous to their sales, and all expenses incurred in the management and disbursement of the moneys which may be received therefrom, shall be paid by the States to which they may belong, out of the treasury of said States, so that the entire proceeds of the sale of said lands shall be applied without any diminution whatever to the purposes hereinafter mentioned.

SECTION 4 (original). *And be it further enacted*, That all moneys derived from the sale of the lands aforesaid by the States to which the lands are apportioned, and from the sales of land scrip hereinbefore provided for, shall be invested in stocks of the United States or of the States, or some other safe stocks, yielding not less than five per centum upon the par value of said stocks; and that the moneys so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished (except so far as may be provided in section five of this act), and the interest of which shall be inviolably appropriated by each State which may take and claim the benefit of this act, to the endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.

SECTION 4 (as amended April 13, 1926). That all moneys derived from the sale of lands aforesaid by the States to which lands are apportioned and from the sales of land scrip hereinbefore provided for shall be invested in bonds of the United States or of the States or of some other safe bonds; or the same may be invested by the States having no State bonds in any manner after the legislature of such States shall have assented thereto and engaged that such funds shall yield a fair and reasonable rate of return, to be fixed by the State legislatures; and that the principal thereof shall forever remain unimpaired: *Provided*, that the moneys so invested or loaned shall constitute a perpetual fund, the capital of which shall remain forever undiminished (except so far as may be provided in section 5 of this Act), and the interest of which shall be inviolably appropriated, by each State which may take and claim the benefit of this Act, to the endowment, support, and maintenance of at least one college where the leading object shall be, without

excluding other scientific and classical studies and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.

SECTION 5. *And be it further enacted*, That the grant of land and land scrip hereby authorized shall be made on the following conditions, to which, as well as to the provisions hereinbefore contained, the previous assent of the several States shall be signified by legislative acts:

First. If any portion of the fund invested, as provided by the foregoing section, or any portion of the interest thereon, shall, by any action or contingency, be diminished or lost, it shall be replaced by the State to which it belongs, so that the capital of the fund shall remain forever undiminished; and the annual interest shall be regularly applied without diminution to the purposes mentioned in the fourth section of this act, except that a sum, not exceeding ten per centum upon the amount received by any State under the provisions of this act, may be expended for the purchase of lands for sites or experimental farms whenever authorized by the respective legislatures and States.

Second. No portion of said fund, nor the interest thereon, shall be applied directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair of any building or buildings.

Third. Any State which may take and claim the benefit of the provisions of this act shall provide, within five years, at least not less than one college, as described in the fourth section of this act, or the grant to such State shall cease; and said State shall be bound to pay the United States the amount received of any lands previously sold and that the title to purchasers under the State shall be valid.

Fourth. An annual report shall be made regarding the progress of each college, recording any improvements and experiments made, with their cost and results, and such other matters, including state industrial and economical statistics, as may be supposed useful, one copy of which shall be transmitted by mail free, by each, to all the other colleges which may be endowed under the provisions of this act, and also one copy to the Secretary of the Interior.

Fifth. When lands shall be selected from those which have been raised to double the minimum price, in consequence of railroad grants, they shall be computed to the states at a maximum price and the number of acres proportionately diminished.

Sixth. No state while in a condition of rebellion or insurrec-

tion against the Government of the United States shall be entitled to the benefit of this act.

Seventh. No state shall be entitled to the benefits of this act unless it shall express its acceptance thereof by its legislature within two years from the date of its approval by the President.

SECTION 6. *And be it further enacted*, That land scrip issued under the provisions of this act shall not be subject to location until after the first day of January, one thousand eight hundred and sixty-three.

SECTION 7. *And be it further enacted*, That the land officers shall receive the same fees for locating land scrip issued under the provisions of this act as is now allowed for the location of military bounty land warrants under existing laws: *Provided*, That their maximum compensation shall not be thereby increased.

SECTION 8. *And be it further enacted*, That the governors of the several States to which scrip shall be issued under this act shall be required to report annually to Congress all sales made of such scrip until the whole shall be disposed of, the amount received for the same, and what appropriation has been made of the proceeds.

Approved, July 2, 1862 (12 Stat. L. 503).

ACT OF 1866 EXTENDING THE TIME WITHIN WHICH
LAND-GRANT COLLEGES MAY BE ESTABLISHED

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the time in which the several States may comply with the provisions of the act of July second, eighteen hundred and sixty-two, entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts," is hereby extended so that the acceptance of the benefits of the said act may be expressed within three years from the passage of this act, and the colleges required by the said act may be provided within five years from the date of the filing of such acceptance with the Commissioner of the General Land Office: *Provided*, That when any Territory shall become a State and be admitted into the Union such new State shall be entitled to the benefits of the said act of July second, eighteen hundred and sixty-two, by expressing the acceptance therein required within three years from the date of its admission into the Union, and providing the college or colleges within five years after such acceptance, as prescribed in this act: *Provided further*, That any State which has heretofore expressed its acceptance of the act herein referred to shall have the period of five years within which to provide at least one college, as described in the fourth section of said act, after the

time for providing said college, according to the act of July second, eighteen hundred and sixty-two, shall have expired.

Approved, July 23, 1866 (14 Stat. L. 208).

ACT OF 1890 FOR THE FURTHER ENDOWMENT OF
LAND-GRANT COLLEGES

SECOND MORRILL ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be, and hereby is, annually appropriated, out of any money in the Treasury not otherwise appropriated, arising from the sales of public lands, to be paid as hereinafter provided, to each State and Territory for the more complete endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts now established, or which may be hereafter established, in accordance with an act of Congress approved July second, eighteen hundred and sixty-two, the sum of fifteen thousand dollars for the year ending June thirtieth, eighteen hundred and ninety, and an annual increase of the amount of such appropriation thereafter for ten years by an additional sum of one thousand dollars over the preceding year, and the annual amount to be paid thereafter to each State and territory shall be twenty-five thousand dollars, to be applied only to instruction in agriculture, the mechanic arts, the English language and the various branches of mathematical, physical, natural, and economical science, with special reference to their applications in the industries of life and to the facilities for such instruction: *Provided*, That no money shall be paid out under this act to any State or Territory for the support and maintenance of a college where a distinction of race or color is made in the admission of students, but the establishment and maintenance of such colleges separately for white and colored students shall be held to be a compliance with the provisions of this act if the funds received in such State or Territory be equitably divided as hereinafter set forth: *Provided*, That in any State in which there has been one college established in pursuance of the act of July second, eighteen hundred and sixty-two, and also in which an educational institution of like character has been established, or may be hereafter established, and is now aided by such State from its own revenue, for the education of colored students in agriculture and the mechanic arts, however named or styled, or whether or not it has received money heretofore under the act to which this act is an amendment, the legislature of such State may propose and report to the Secretary of the Interior a just and equitable division of the fund to be received under this act, between one college for

white students and one institution for colored students, established as aforesaid, which shall be divided into two parts, and paid accordingly and thereupon such institution for colored students shall be entitled to the benefits of this act and subject to its provisions, as much as it would have been if it had been included under the act of eighteen hundred and sixty-two, and the fulfillment of the foregoing provisions shall be taken as a compliance with the provision in reference to separate colleges for white and colored students.

SECTION 2. That the sums hereby appropriated to the States and Territories for the further endowment and support of colleges shall be annually paid on or before the thirty-first day of July of each year, by the Secretary of the Treasury, upon the warrant of the Secretary of the Interior, out of the Treasury of the United States, to the State or Territorial treasurer, or to such other officer as shall be designated by the laws of such State or Territory to receive the same, who shall upon the order of the trustees of the college or the institution for colored students, immediately pay over said sums to the treasurers of the respective colleges or other institutions entitled to receive the same, and such treasurers shall be required to report to the Secretary of Agriculture and to the Secretary of the Interior on or before the first day of September of each year a detailed statement of the amount so received and of its disbursement. The grants of moneys authorized by this act are made subject to the legislative assent of the several States and Territories to the purpose of said grants: *Provided*, That payments of such installments of the appropriation herein made as shall become due to any State before the adjournment of the regular session of legislature meeting next after the passage of this act shall be made upon the assent of the governor thereof, duly certified to the Secretary of the Treasury.

SECTION 3. That if any portion of the moneys received by the designated officer of the State or Territory for the further and more completed endowment, support, and maintenance of colleges, or of institutions for colored students, as provided in this act, shall, by any action or contingency, be dismissed or lost, or be misapplied, it shall be replaced by the State or Territory to which it belongs, and until so replaced no subsequent appropriation shall be apportioned or paid to such State or Territory; and no portion of said moneys shall be applied, directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair of any building or buildings. An annual report by the president of each of said colleges shall be made to the Secretary of Agriculture, as well as to the Secretary of the Interior, regarding the condition and progress of each college, including statistical information in relation to

its receipts and expenditures, its library, the number of its students and professors, and also as to any improvements and experiments made under the direction of any experiment stations attached to said colleges, with their cost and results and such other industrial and economical statistics as may be regarded as useful, one copy of which shall be transmitted by mail free to all other colleges further endowed under this act.

SECTION 4. That on or before the first day of July in each year, after the passage of this act, the Secretary of the Interior shall ascertain and certify to the Secretary of the Treasury as to each State and Territory, whether it is entitled to receive its share of the annual appropriation for colleges, or of institutions for colored students, under this act and the amount which thereupon each is entitled, respectively, to receive. If the Secretary of the Interior shall withhold a certificate from any State or Territory of its appropriation, the facts and reasons therefor shall be reported to the President, and the amount involved shall be kept separate in the Treasury until the close of the next Congress, in order that the State or Territory may, if it should so desire, appeal to Congress from the determination of the Secretary of the Interior. If the next Congress shall not direct such sum to be paid it shall be covered into the Treasury. And the Secretary of the Interior is hereby charged with the proper administration of this law.

SECTION 5. That the Secretary of the Interior shall annually report to Congress the disbursements which have been made in all the States and Territories, and also whether the appropriation of any State or Territory has been withheld, and, if so, the reasons therefor.

SECTION 6. Congress may at any time amend, suspend, or repeal any or all of the provisions of this act.

Approved, August 30, 1890 (26 Stat. L. 417).

NELSON AMENDMENT FURTHER ENDOWING THE LAND-GRANT COLLEGES²

* * * That there shall be, and hereby is, annually appropriated, out of any money in the Treasury not otherwise appropriated, to be paid as hereinafter provided, to each State and Territory for the more complete endowment and maintenance of agricultural colleges now established, or which may hereafter be established, in accordance with the act of Congress approved July second, eighteen hundred and sixty-two, and the act of Congress approved August thirtieth, eighteen hundred and ninety, the sum of five thousand dollars, in addition to the sums named in the said act, for the fiscal year ending June thirtieth,

²Extract from the act making appropriations for the United States Department of Agriculture for the fiscal year ended June 30, 1908.

nineteen hundred and eight, and an annual increase of the amount of such appropriation thereafter for four years by an additional sum of five thousand dollars over the preceding year, and the annual sum to be paid thereafter to each State and Territory shall be fifty thousand dollars, to be applied only for the purposes of the agricultural colleges as defined and limited in the act of Congress approved July second, eighteen hundred and sixty-two, and the act of Congress approved August thirtieth, eighteen hundred and ninety.

That the sum hereby appropriated to the States and Territories for the further endowment and support of the colleges shall be paid by, to, and in the manner prescribed by the act of Congress approved August thirtieth, eighteen hundred and ninety, entitled "An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts established under the provisions of an act of Congress approved July second, eighteen hundred and sixty-two," and the expenditure of the said money shall be governed in all respects by the provisions of the said act of Congress approved July second, eighteen hundred and sixty-two, and the said act of Congress approved August thirtieth, eighteen hundred and ninety: *Provided*, That said colleges may use a portion of this money for providing courses for the special preparation of instructors for teaching the elements of agriculture and the mechanic arts.

Approved, March 4, 1907 (34 Stat. L. 1256, 1281).

AGRICULTURAL EXPERIMENT STATIONS

ACT OF 1887 ESTABLISHING AGRICULTURAL EXPERIMENT STATIONS

HATCH ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to aid in acquiring and diffusing among the people of the United States useful and practical information on subjects connected with agriculture, and to promote scientific investigation and experiment respecting the principles and applications of agricultural science, there shall be established under direction of the college or colleges or agricultural departments of colleges in each State or Territory established, or which may hereafter be established, in accordance with the provisions of an act approved July second, eighteen hundred and sixty-two, entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of

agriculture and the mechanic arts," or any of the supplements to said act, a department to be known and designated as an "agricultural experiment station": *Provided*, That in any State or Territory in which two such colleges have been or may be so established the appropriation hereinafter made to such State or Territory shall be equally divided between such colleges, unless the legislature of such State or Territory shall otherwise direct.

SECTION 2. That it shall be the object and duty of said experiment stations to conduct original researches or verify experiments on the physiology of plants and animals; the diseases to which they are severally subject, with the remedies for the same; the chemical composition of useful plants at their different stages of growth; the comparative advantages of rotative cropping as pursued under the varying series of crops; the capacity of new plants or trees for acclimation; the analysis of soils and water; the chemical composition of manures, natural or artificial, with experiments designed to test the comparative effects on crops of different kinds; the adaptation and value of grasses and forage plants; the composition and digestibility of the different kinds of food for domestic animals; the scientific and economic questions involved in the production of butter and cheese; and such other researches or experiments bearing directly on the agricultural industry of the United States as may in each case be deemed advisable, having due regard to the varying conditions and needs of the respective States and Territories.

SECTION 3. That in order to secure, as far as practicable, uniformity of methods and results in the work of said stations, it shall be the duty of the United States Commissioner (now Secretary) of Agriculture to furnish forms, as far as practicable for the tabulation of results of investigation or experiment; to indicate from time to time such lines of inquiry as to him shall seem most important, and in general, to furnish such advice and assistance as will best promote the purpose of this act. It shall be the duty of each of said stations annually, on or before the first of February, to make to the governor of the State or Territory in which it is located a full and detailed report of its operations, including a statement of receipts and expenditures, a copy of which report shall be sent to each of said stations, to the said Commissioner (now Secretary) of Agriculture, and to the Secretary of the Treasury of the United States.

SECTION 4. That bulletins or reports of progress shall be published at said stations at least once in three months, one copy of which shall be sent to each newspaper in the States or Territories in which they are respectively located, and to such individuals actually engaged in farming as may request the

same and as far as the means of the station will permit. Such bulletins or reports and the annual reports of said stations shall be transmitted in the mails of the United States free of charge for postage, under such regulations as the Postmaster General may from time to time prescribe.

SECTION 5. That for the purpose of paying the necessary expenses of conducting investigations and experiments and printing and distributing the results as hereinbefore prescribed, the sum of fifteen thousand dollars per annum is hereby appropriated to each State, to be specially provided for by Congress in the appropriations from year to year, and to each Territory entitled under the provisions of section eight of this act, out of any money in the Treasury proceeding from the sales of public lands, to be paid in equal quarterly payments on the first day of January, April, July, and October in each year, to the treasurer or other officer duly appointed by the governing boards of said colleges to receive the same, the first payment to be made on the first day of October, eighteen hundred and eighty-seven: *Provided, however,* That out of the first annual appropriation so received by any station an amount not exceeding one-fifth may be expended in the erection, enlargement, or repair of a building or buildings necessary for carrying on the work of such station; and thereafter an amount not exceeding five per centum of such annual appropriation may be so expended.

SECTION 6. That whenever it shall appear to the Secretary of the Treasury from the annual statement of receipts and expenditures of any of said stations that a portion of the preceding annual appropriation remains unexpended, such amount shall be deducted from the next succeeding annual appropriation to such station, in order that the amount of money appropriated to any station shall not exceed the amount actually and necessarily required for its maintenance and support.

SECTION 7. That nothing in this act shall be construed to impair or modify the legal relation existing between any of the said colleges and the government of the States or Territories in which they are respectively located.

SECTION 8. That in States having colleges entitled under this section to the benefits of this act and having also agricultural experiment stations established by law separate from said colleges, such States shall be authorized to apply such benefits to experiments at stations so established by such States; and in case any State shall have established, under the provisions of said act of July second aforesaid, an agricultural department or experimental station in connection with any university, college, or institution not distinctly an agricultural college or school, and such State shall have established or shall hereafter

establish a separate agricultural college or school, which shall have connected therewith an experimental farm or station, the legislature of such State may apply in whole or in part the appropriation by this act made to such separate agricultural college or school, and no legislature shall by contract, express or implied, disable itself from so doing.

SECTION 9. That the grants of moneys authorized by this act are made subject to the legislative assent of the several States and Territories to the purpose of said grants: *Provided*, That payment of such installment of the appropriation herein made as shall become due to any State before the adjournment of the regular session of its legislature meeting next after the passage of this act shall be made upon the assent of the governor thereof duly certified to the Secretary of the Treasury.

SECTION 10. Nothing in this act shall be held or construed as binding the United States to continue any payments from the Treasury to any or all the States or institutions mentioned in this act, but Congress may at any time amend, suspend, or repeal any or all of the provisions of this act.

Approved, March 2, 1887 (24 Stat. L. 440).

ACT OF 1888 AMENDING THE HATCH ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the grants of money authorized by the act of Congress entitled "An act to establish agricultural experiment stations in connection with the colleges established in the several States under the provisions of an act approved July second, eighteen hundred and sixty-two, and of acts supplementary thereto," are subject as therein provided to the legislative assent of the States or Territories to be affected thereby; but as to such installments of the appropriations as may be now due or may hereafter become due, when the legislature may not be in session, the governor of said State or Territory may make the assent therein provided, and upon a duly certified copy thereof to the Secretary of the Treasury he shall cause the same to be paid in the manner provided in the act of which this is amendatory, until the termination of the next regular session of the legislature of such State or Territory.

Approved, June 7, 1888 (25 Stat. L. 176).

ACT OF 1906 FOR THE FURTHER ENDOWMENT OF AGRICULTURAL EXPERIMENT STATIONS

ADAMS ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall

be, and hereby is, annually appropriated, out of any money in the Treasury not otherwise appropriated, to be paid as herein-after provided, to each State and Territory, for the more complete endowment and maintenance of agricultural experiment stations now established or which may hereafter be established in accordance with the act of Congress approved March second, eighteen hundred and eighty-seven, the sum of five thousand dollars in addition to the sum named in said act for the year ending June thirtieth, nineteen hundred and six, and an annual increase of the amount of such appropriation thereafter for five years by an additional sum of two thousand dollars over the preceding year, and the annual amount to be paid thereafter to each State or Territory shall be thirty thousand dollars, to be applied only to paying the necessary expenses of conducting original researches or experiments bearing directly on the agricultural industry of the United States, having due regard to the varying conditions and needs of the respective States or Territories.

SECTION 2. That the sums hereby appropriated to the States and Territories for the further endowment and support of agricultural experiment stations shall be annually paid in equal quarterly payments on the first day of January, April, July, and October of each year by the Secretary of the Treasury, upon the warrant of the Secretary of Agriculture, out of the Treasury of the United States, to the treasurer or other officer duly appointed by the governing boards of said experiment stations to receive the same, and such officers shall be required to report to the Secretary of Agriculture on or before the first day of September of each year a detailed statement of the amount so received and of its disbursement, on schedules prescribed by the Secretary of Agriculture. The grants of money authorized by this act are made subject to legislative assent of the several States and Territories to the purpose of said grants: *Provided*, That payment of such installments of the appropriation herein made as shall become due to any State or Territory before the adjournment of the regular session of legislature meeting next after the passage of this act shall be made upon the assent of the governor thereof, duly certified by (to) the Secretary of the Treasury.

SECTION 3. That if any portion of the moneys received by the designated officer of any State or Territory for the further and more complete endowment, support, and maintenance of agricultural experiment stations as provided in this act shall by any action or contingency be diminished or lost or be misplaced, it shall be replaced by said State or Territory to which it belongs, and until so replaced no subsequent appropriation shall be apportioned or paid to such State or Territory; and no

portion of said moneys exceeding five per centum of each annual appropriation shall be applied directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair of any building or buildings, or to the purchase or rental of land. It shall be the duty of each of said stations annually, on or before the first day of February, to make to the governor of the State or Territory in which it is located a full and detailed report of its operations, including a statement of receipts and expenditures, a copy of which report shall be sent to each of said stations, to the Secretary of Agriculture, and to the Secretary of the Treasury of the United States.

SECTION 4. That on or before the first day of July in each year after the passage of this act the Secretary of Agriculture shall ascertain and certify to the Secretary of the Treasury as to each State and Territory whether it is complying with the provisions of this act and is entitled to receive its share of the annual appropriation for agricultural experiment stations under this act and the amount which thereupon each is entitled, respectively, to receive. If the Secretary of Agriculture shall withhold a certificate from any State or Territory of its appropriation, the facts and reasons therefor shall be reported to the President, and the amount involved shall be kept separate in the Treasury until the close of the next Congress, in order that the State or Territory may, if it shall so desire, appeal to Congress from the determination of the Secretary of Agriculture. If the next Congress shall not direct such sum to be paid, it shall be covered into the Treasury; and the Secretary of Agriculture is hereby charged with the proper administration of this law.

SECTION 5. That the Secretary of Agriculture shall make an annual report to Congress on the receipts and expenditures and work of the agricultural experiment stations in all of the States and Territories, and also whether the appropriation of any State or Territory has been withheld, and if so, the reason therefor.

SECTION 6. That Congress may at any time amend, suspend, or repeal any or all of the provisions of this act.

Approved, March 16, 1906 (34 Stat. L. 63).

ACT OF 1925 FOR THE MORE COMPLETE ENDOWMENT OF THE AGRICULTURAL EXPERIMENT STATIONS

PURNELL ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the more complete endowment and maintenance of agricultural experiment stations now established, or which may hereafter be established, in accordance with the act of Congress approved

March 2, 1887, there is hereby authorized to be appropriated, in addition to the amounts now received by such agricultural experiment stations, the sum of \$20,000 for the fiscal year ending June 30, 1926; \$30,000 for the fiscal year ending June 30, 1927; \$40,000 for the fiscal year ending June 30, 1928; \$50,000 for the fiscal year ending June 30, 1929; \$60,000 for the fiscal year ending June 30, 1930; and \$60,000 for each fiscal year thereafter, to be paid to each State and Territory; and the Secretary of Agriculture shall include the additional sums above authorized to be appropriated in the annual estimates of the Department of Agriculture, or in a separate estimate, as he may deem best. The funds appropriated pursuant to this act shall be applied only to paying the necessary expenses of conducting investigations or making experiments bearing directly on the production, manufacture, preparation, use, distribution, and marketing of agricultural products and including such scientific researches as have for their purpose the establishment and maintenance of a permanent and efficient agricultural industry, and such economic and sociological investigations as have for their purpose the development and improvement of the rural home and rural life, and for printing and disseminating the results of said researches.

SECTION 2. That the sums hereby authorized to be appropriated to the States and Territories for the further endowment and support of agricultural experiment stations shall be annually paid in equal quarterly payments on the 1st day of January, April, July, and October of each year by the Secretary of the Treasury upon a warrant of the Secretary of Agriculture out of the Treasury of the United States, to the treasurer or other officer duly appointed by the governing boards of such agricultural experiment stations to receive the same and such officers shall be required to report to the Secretary of Agriculture on or before the 1st day of September of each year a detailed statement of the amount so received and of its disbursement on schedules prescribed by the Secretary of Agriculture. The grants of money authorized by this act are made subject to legislative assent of the several States and Territories to the purpose of said grants: *Provided*, That payment of such installments of the appropriation herein authorized to be made as shall become due to any State or Territory before the adjournment of the regular session of the legislature meeting next after the passage of this act shall be made upon the assent of the governor thereof duly certified to the Secretary of the Treasury.

SECTION 3. That if any portion of the moneys received by the designated officer of any State or Territory for the further and more complete endowment, support, and maintenance of agricultural experiment stations as provided in this act shall

by any action or contingency be diminished or lost or be misapplied, it shall be replaced by said State or Territory to which it belongs, and until so replaced no subsequent appropriation shall be apportioned or paid to such State or Territory, and no portion of said moneys exceeding 10 per centum of each annual appropriation shall be applied directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair of any building or buildings or to the purchase or rental of land. It shall be the duty of each of the said stations annually, on or before the 1st day of February, to make to the governor of the State or Territory in which it is located a full and detailed report of its operations, including a statement of receipts and expenditures for the fiscal year next preceding, a copy of which report shall be sent to each of the said stations and the Secretary of Agriculture and to the Secretary of the Treasury of the United States.

SECTION 4. That on or before the 1st day of July in each year after the passage of this act the Secretary of Agriculture shall ascertain and certify to the Secretary of the Treasury as to each State and Territory whether it is complying with the provisions of this act and is entitled to receive its share of the annual appropriations for agricultural experiment stations under this act and the amount which thereupon each is entitled, respectively, to receive. If the Secretary of Agriculture shall withhold from any State or Territory a certificate of its appropriation, the facts and reasons therefor shall be reported to the President and the amount involved shall be kept separate in the Treasury until the close of the next Congress in order that the State or Territory may, if it shall so desire, appeal to Congress from the determination of the Secretary of Agriculture. If the next Congress shall not direct such sum to be paid, it shall be covered into the Treasury. The Secretary of Agriculture is hereby charged with the proper administration of this law.

SECTION 5. That the Secretary of Agriculture shall make an annual report to Congress on the receipts and expenditures and work of the agricultural experiment stations in all of the States and Territories, and also whether the appropriation of any State or Territory has been withheld; and if so, the reason therefor.

SECTION 6. That Congress may at any time amend, suspend, or repeal any and all of the provisions of this act.

Approved, February 24, 1925.

LIST OF JUDICIAL DECISIONS

UNIVERSITY OF ALABAMA

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